



THE LAW OF ELECTIONS
AND
ELECTION PETITIONS

BY
CHANDOS LEIGH
AND
HENRY D. LE MARCHANT.

SECOND EDITION.

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ERIC N. ARMOUR

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ELECTION LAW.

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ERIC N. ARMOUR

A GUIDE

TO

ELECTION LAW

AND THE

Law and Practice

OF

ELECTION PETITIONS.

BY THE

Leigh, Chandos Leigh 1st Baron
(HON. CHANDOS LEIGH, M.A.)

LATE FELLOW OF ALL SOULS' COLLEGE, OXFORD, BARRISTER-AT-LAW,
RECORDER OF STAMFORD:

AND

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SECOND EDITION.

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PREFACE

TO

THE SECOND EDITION.

THE numerous decisions of importance since 1870, together with the changes in the law made by the Ballot Act, 1872, have altered the procedure at the trial of election petitions so materially that the Authors of this work believe a second edition may not be found unacceptable to the profession.

It has been thought advisable to entirely re-write the chapters on "Scrutiny" and "Practical Suggestions and Evidence," but the Authors have throughout endeavoured, as far as possible, to preserve the form of the original text, and to compress all the new matter within the closest possible limits.

* The forms of Information and Indictment are omitted, as hardly coming within the scope of the work.

In the Appendix will be found the Ballot Act, 1872, and 6 Anne, c. 7, and 17 & 18 Vict. c. 102 (C. P. P. Act, 1854), have been added, though not printed in the original edition, since a frequent reference to those Acts of Parliament has been found necessary during the trial of a petition.

The subject of Municipal Elections has been referred to whenever it has been thought expedient to call attention to it, and the "Cor. Prac. (Mun. El.) Act, 1872," and the General Rules thereto, are inserted in the Appendix.

TEMPLE, 1874.

PREFACE

TO

THE FIRST EDITION.



THE alterations made by the Parliamentary Elections Act, 1868, in the law relating to the trial of Election Petitions, render it unnecessary to offer any apology for adding another Treatise to the various works which have already appeared on the subject.

As Registration has been already ably handled in Mr. Rogers' book on Elections and Registration, and that subject is untouched by the Parliamentary Elections Act, 1868, it is not treated in the present book.

The aim of the Authors has been to enable the reader, whether he be a candidate or agent, to see at a glance how proceedings, connected with an election, to which the Corrupt Practices Prevention Acts apply, should be conducted, together with the Penalties with which persons transgressing in law may be visited.

Though, perhaps, hardly within the province of this work, a chapter on Scrutiny, and some Practical Suggestions have been added, as illustrating the working of the new procedure.

✓ In the Appendix will be found a special form of information for bribery and an indictment for personation of a voter and making a false answer, together with some scrutiny lists and special forms of petitions; to these have been added the Parliamentary Elections Act, 1868, and the General Rules, Michaelmas Term, 1868, as to the proceedings on Election Petitions.

In conclusion, the Authors cannot refrain from expressing their gratitude to Mr. Baron Martin and Mr. Justice Willes for their valuable suggestions during the progress of the book; also to Mr. John Clerk, Q.C., Mr. Archibald, and Messrs. Wyatt and Hoskins, for the information which they have kindly afforded them.

TEMPLE,
March 1870.

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Bar. & Arn.....	Barron & Arnold's Cases of Controverted Elections.
C. & D.....	Corbet & Daniell's Cases of Controverted Elections.
C. P. P. Act, 1854.....	Corrupt Practices Prevention Act (17 & 18 Vict. c. 102).
Cor. Prac. (Mun. El.) Act, 1872	Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60).
F. & F.....	Falconer & Fitzherbert's Cases of Controverted Elections.
Judgments (a)	Judgments delivered on the Trial of Election Petitions.
K. & O.....	Knapp & Ombler's Cases of Controverted Elections.
L. R.	Law Reports.
L. T. Rep. N. S.	Law Times Reports, New Series.
May's Parl. Prac.....	May's Law and Practice of Parliament.
O'M. & H.....	O'Malley & Harcastle's Reports of the Decisions of the Judges for the Trial of Election Petitions.
Parl. El. Act, 1868.....	Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125).
Peck	Peckwell's Reports.
P. R. & D.....	Power, Rodwell, & Dew's Reports of Controverted Elections.
Rep. Peop. Act, 1867	Representation of the People Act, 1867 (30 & 31 Vict. c. 102).

(a) The printed judgments are quoted as authorities when the passages referred to are not contained in O'Malley and Harcastle's Reports.

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*Delivered by the Judges selected in pursuance of
“The Parliamentary Elections Act, 1868,”
for the trial of Election Petitions.*

N.B.—The name of the Judge before whom the trial of each
Petition was held is set opposite to the name of the Case.

Borough of Belfast	...	...	...	FITZGERALD, B.
„ Beverley	...	...	...	MARTIN, B.
„ Bewdley	...	...	...	BLACKBURN, J.
„ Bewdley (2)	...	...	...	BLACKBURN, J.
„ Blackburn	WILLES, J.
„ Bodmin	WILLES, J.
„ Bradford	MARTIN, B.
„ Bradford (2)	MARTIN, B.
„ Brecon	MARTIN, B.
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„ Carrickfergus	O'BRIEN, J.
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„ Coventry	WILLES, J.
„ Dover	MARTIN, B.
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„ Dublin	KEOGH, J.
„ Galway	KEOGH, J.
„ Greenock	LORD BARCAPLE.
„ Guildford	WILLES, J.
„ Hastings	BLACKBURN, J.
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„ King's Lynn	MARTIN, B.
„ Lichfield	WILLES, J.

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Borough of Norwich	MARTIN, B.
„ Nottingham	MARTIN, B.
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„ Taunton	BLACKBURN, J.
„ Wallingford...	BLACKBURN, J.
„ Warrington	MARTIN, J.
„ Westbury	WILLES, J.
„ Westminster	MARTIN, B.
„ Wexford	MONAGHAN, C. J.
„ Wigan	MARTIN, B.
„ Windsor	WILLES, J.
County of York, West Riding (South)	MARTIN, B.
Borough of Youghal	O'BRIEN, J.
„ Bristol	BRAMWELL, B.
„ Norwich	KEATING, J.
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County of Galway	KEOGH, J.
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- 7 & 8 Will. III. c. 25 (Returning officer). (G. B. and I.)
- * 6 Anne, c. 7 (Offices). (G. B. and I.)
- 1 Geo. I. stat. 2, c. 56 (Pensions). (G. B.)
- 22 Geo. III. c. 45 (Contractors). (G. B. and I.)
- 33 Geo. III. c. 41 (Pensioners). (I.)
- 35 Geo. III. c. 29 (Returning officer). (I.)
- 41 Geo. III. c. 52 (Disabilities). (G. B. and I.)
- 41 Geo. III. c. 63 (Clergymen). (G. B. and I.)
- 4 Geo. IV. c. 55 (Returning officer). (I.)
- 2 Will. IV. c. 45 (Reform Act). (E.)
- 2 & 3 Will. IV. c. 65 (Reform Act). (S.)
- 5 & 6 Will. IV. c. 76 (Freemen, returning officers). (E.)
- 6 Vict. c. 18 (Registration Act). (E.)
- 13 & 14 Vict. c. 69 (Registration Act). (I.)
- 15 & 16 Vict. c. 57 (Commission of Inquiry into Corrupt Practices). (G. B. and I.)
- 16 & 17 Vic. c. 83 (Law of Evidence). (E. and I.)
- * 17 & 18 Vict. c. 102 (Corrupt Practices Prevention Act). (G. B. and I.)
- 21 & 22 Vict. c. 87 (Corrupt Practices Prevention Act [amendment]). (G. B. and I.)
- 21 & 22 Vict. c. 106 (India Government). (G. B. and I.)
- 21 & 22 Vict. c. 110 (Writs during recess). (G. B. and I.)
- 26 & 27 Vict. c. 29 (Election expenses). (G. B. and I.)
- 29 & 30 Vict. c. 20 (Indemnification). (G. B. and I.)
- 30 & 31 Vict. c. 102 (Representation of the People Act). (E.)

31 & 32 Vict. c. 48 (Representation of the People Act). (S.)

31 & 32 Vict. c. 49 (Representation of the People Act). (I.)

31 & 32 Vict. c. 73 (To remove disabilities from revenue officers). (G. B. and I.)

* 31 & 32 Vict. c. 125 (Parliamentary Elections Act). (G. B. and I.)

32 & 33 Vict. c. 15 (Civil Service pensions). (G. B. and I.)

33 Vict. c. 11 (To remove disabilities from revenue officers). (I.)

33 & 34 Vict. c. 38 (Disfranchisement). (I.)

33 & 34 Vict. c. 54 (Disfranchisement). (I.)

33 & 34 Vict. c. 91 (Clerical disabilities). (E.)

34 & 35 Vict. c. 57 (Disfranchisement). (E.)

* 35 & 36 Vict. c. 33 (Ballot Act). (G. B. and I.)

* 35 & 36 Vict. c. 60 (Corrupt Practices, Municipal Elections, Act, 1872). (E. and I.)

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CORRUPT PRACTICES.

CHAPTER I.

BRIBERY, TREATING, UNDUE INFLUENCE, PERSONATION.

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CORRUPT Practices mean ¹Bribery, ²Treating, ³Undue Influence, and ⁴Personation. See the Parl. El. Act, 1868, s. 3.

5 *Stealing Vehicles,*

6 *Furnishing Refreshment*

7 *Selling Liquor on Polling Day*

BRIBERY.

Rs 9-20

161-165-16

170.

BRIBERY.

R50 11 s 216)

"Corrupt practices or 'corrupt practice' shall mean bribery, treating, and undue influence, or any of such offences as defined by act of parliament or recognised by the common law of parliament."

And the Ballot Act, 1872, s. 24.

R50.9 167

"The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parl. El. Act, 1868."

250 9 129 160

They are severally defined by the C. P. P. Act, 1854, ss. 2, 3, 4, 5.

161 162 163

166

"That act, with respect to corrupt practices, strikes at three different classes of such practices. The 2d and 3d sections forbid influencing men by mercenary motives or their love of gain or reward. The 4th section forbids appeals to men's gluttony or meaner appetites. The 5th section appealing to a man's fears by means of violence or intimidation." *Westbury, Judgments*, 195, per *Willes, J.*

Bribery, though an offence at common law, has been further defined with great accuracy by a variety of statutes, all of which were repealed by the C. P. P. Act, 1854, which now contains the only statutable definition of bribery: ss. 2, 3.

S. 2. "The following persons shall be deemed guilty of bribery and shall be punishable accordingly:—

5159
(a)

"I. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to

endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election :

“II. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election :

“III. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in parliament, or the vote of any voter at any election :

“IV. Every person who shall, upon or in consequence of any such gift, loan,

BRIBERY.

offer, promise, procurement, or agreement, procure or engage, promise or endeavour to procure, the return of any person to serve in parliament, or the vote of any voter at any election :

*S. 159
(d)* “V. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.”

S. 3. “The following persons shall be also deemed guilty of bribery, and shall be punishable accordingly:—

*S. 160
(a)* “I. Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election :

*S. 160
(b)* “II. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting,

or having induced any other person to vote or refrain from voting, at any election" (a). BRIBERY.

It is the giving or offering money or money's worth with the view of influencing a vote. |

If given before a person has voted it is *ipso facto* bribery—i.e., the act will of itself be assumed to be bribery unless the contrary be shown by the respondent. Before the election.

"So here, where the legislature has not introduced the word 'corruptly,' and the natural and reasonable inference from the act is that it was an act done for the purpose contemplated, the legislature has treated it as corrupt without mentioning anything more about it; but in those cases in which it seems intended that the court should not infer the purpose simply and solely from the act, it has introduced the word 'corruptly.' *Limerick*, O'M. & H. 262.

If given on account of a person having voted or refrained from voting, it must be shown to have been done "corruptly" (b)—i.e., the act itself will not be assumed to be bribery unless it can be shown by the petitioner to be the result of a pre- After the election.

(a) For the penalties attached to ss. 2 and 3, see "Penalties."

(b) "Corruptly"—i.e., "To influence votes." *Cheltenham*, O'M. & H. 65. "To produce the result which the legislature intended to forbid." *Wallingford*, O'M. & H. 60. "Means contrary to the intention of this act, with a motive or intention by means of it to produce an effect upon the election, not going so far as bribery, but with a motive thereby to influence the election." *Hereford*, O'M. & H. 195.

BRIBERY. vious contract or understanding. Per *Lush, J., Brecon, Judgments.* See also *Cooper v. Slade*, 27 L. J. Q. B. 451.

Offer. Any *offer* of money or money's worth is equally forbidden.

“Cases of offers of advantage, though these cases have been classed below those of bribery by both the learned counsel: it cannot be supposed an offer to bribe is not as bad as the actual payment of money.” *Coventry, O'M. & H.* 107.

Evidence of offer } But the *evidence* required to prove an offer should be stronger than where money has actually passed.

“It is stated in a judgment of my brother Blackburn that the giving of money is a thing which can be proved, and if money is proved to be given, you must search it out; but he states, where the evidence as to bribery consisting merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself.” *Cheltenham, O'M. & H.* 64.

Disqualified voter. Money given to a disqualified voter is equally within the terms of the act.

In the *Guildford case* Willes, J., said—“It struck me at first, that the law respecting bribery applied only to persons entitled to vote, but that is not so: the law applies also to a person who may be *prima facie* entitled to a vote; it is said expressly in 17 & 18 Vict. c. 102, s. 38, that the word ‘voter’ shall mean any person who has or claims to have a right to vote in the

election of a member." *Guildford*, O'M. BRIBERY.
& H. 15.

Besides *direct* modes of paying money or offering the same, there are indirect modes of paying or offering money which may be equally held to be bribery. Indirect bribery.

A. *Employment of Electors for hire.*

Before 1867, electors were allowed to be employed by the candidate for the purposes of the election, provided it could be shown that the numbers so employed were reasonable; that non-voters could not be obtained to do the work; that the sums paid were reasonable sums for the amount of work done, and that the work done was *bonâ fide* and not mere colourable (c) work. Employment of electors (paid).

But by "The Rep. Peop. Act, 1867" (d), s. 11, it was enacted—

"No elector who within six months before or during any election for any county or borough shall have been retained, hired, or employed for all or any of the purposes of the election, for reward by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote at such election, and if he shall vote he shall be guilty of a misdemeanour."

(c) "Colourable"—i.e., the fictitious employment of voters, giving them work and making payments to them exceeding the value of the work, and pretending to employ them to do work and then giving them money for not having done it.

(d) Ireland: Rep. Peop. (Ireland) Act, 1868, s. 6. Scotland: Rep. Peop. (Scotland) Act, 1868, s. 8.

BRIBERY.

This section was clearly framed to prevent any paid elector from voting ; in addition, therefore, to the peril which a *candidate* incurred before this statute from the charge of employing *voters* colourably, the *voter* himself is now guilty of a misdemeanour, and his vote would be void on a scrutiny.

Under no circumstances, therefore, should paid electors be polled. And evasions of the act, by employing the relations of electors on unreasonable terms, or for mere nominal duties, should also be specially guarded against as likely to endanger the seat of the candidate (*e*).

“There is no doubt that fictitious employment with the view of paying money would operate as bribery ; and I suppose that it is put as if the colourable employment of the little boy (the son of an elector), and the paying of eleven shillings to him, was a corruption of the father.” *Cheltenham, Judgments, 51.*

Who are paid
electors.

Who are to be considered paid electors within the meaning of the section :—

Paid agents ; paid canvassers ; paid clerks ;
paid messengers ; paid watchers (*f*).

(*e*) See also “Scrutiny.”

(*f*) “To pay men for what is called watching, but in reality doing nothing. . . . It appears to have been done on both sides, and it is a very mischievous system ; it comes within all the mischief of treating, but no statute has as yet been passed rendering it of the same effect as treating. Whether the legislature will think proper to interfere with it hereafter it is not for me to say. It is quite true that where a voter has been employed, no matter whether he has been paid or not—where he has been retained with the expectation that he is to be paid, whether paid or not, his vote would be void.” *Bewdley, O’M. & H. 20.*

Who are not to be considered paid electors within the meaning of the section (g) :—

BRIBERY.

Who are not
paid electors.

(1) Printers :

Printers who also acted as messengers : in the *Northallerton* case it was submitted that the votes of the printers who had also acted as messengers should be cut off as being voters employed in the conduct of the election.

Willes, J., said—"That might be so if there was a stipulation that a person should be employed as a messenger as well as a printer ; but it would not apply to messages incidental to printing, or to any voluntary acting as messenger without a stipulation." *Northallerton*, O'M. & H. 170.

(2) Fly drivers :

"With regard to the fly driver, I do not see what that case is at all, I do not understand it ; I suppose that flies must be employed during an election, and I daresay sometimes more is paid than ordinary during that time. But it is not proved that the respondent's agent was aware that more was paid than was usual ; indeed it appears rather the

(g) Nor would s. 11 seem to include hotel-keepers ; nor the ordinary staff of clerks to solicitors when paid by their principals and not returned in the election accounts ; nor people employed by the corporation to keep the peace and paid out of the town rates ; nor people employed by the returning officer to erect hustings, &c., although the expense of the employment ultimately fell on the candidate. *Ipswich*, K. & O. 387.

BRIBERY.

contrary, because he recollected that £1 was charged when the fly was not wanted during the entire day, and he struck off ten shillings; with regard to the fly driver, I see nothing to bring his case within the act of parliament at all." *Cheltenham, Judgments, 51.*

Payment of
voters for
loss of time.

B. *Payment of Voters for loss of Time.*

"Payments, when given to a person for loss of time in coming to deliver his vote, inevitably, it seems to me (I cannot see how there can be any doubt about it), are payments for voting; that would be a distinct and very clear case within the very terms of the act." *Taunton, Judgments, 353.* See also O'M. & H. 183.

Corrupt
payment of
rates.

C. *Corrupt Payment of Rates.*

Payment of rates for the purpose of influencing the election—i.e., "corruptly" (*h*).

By "The Rep. Peop. Act, 1867," s. 49,

"Any person, either directly or indirectly, *corruptly* paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either

(*h*) Where S. paid G.'s rate, "in order that he should get on the register," and where there was no understanding how he should vote, and the object of paying the rates was that G. should be put on the register, and that he should vote accordingly to what was known to be his own views on politics, Blackburn, J., held it was *not* a corrupt payment of rates. *Oldham, O'M. & H. 165.* See also *Hastings, O'M. & H. 219.*

directly or indirectly, paying any rate on behalf of any voter, for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery and be punishable accordingly; and any person on whose behalf and with whose privity any such payment, as in this section is mentioned, is made, shall also be guilty of bribery and punishable accordingly.”

“In order to make the payment of a rate for the purpose of influencing the election bribery, you must prove that it was done corruptly, that it was done thereby to influence their votes, which, in my judgment, means to induce them to vote for the person on whose behalf the payment was made.” *Cheltenham*, O’M. & H. 64.

“What the legislature prohibited was, the payment of any rates for the purpose of acquiring an influence over the voters; and a case might arise in the formation of a society for the purpose of paying the rates of all persons who are unable to pay their own rates.” *Oldham*, O’M. & H. 165.

D. *Barrister’s Court Money*—i.e., a payment given for the attendance at the revising barrister’s court is not within the *express* terms of the act, but *may* amount to bribery:—

Barrister’s
court money.

“But where the payment is given for an attendance at the revising barrister’s court, it is not within the express terms of the act. It may be well that there should

BRIBERY.

be a payment for an attendance at the barrister's court which should be *bond fide* for that purpose and no other, and which is not meant by the act of parliament. From the fact of paying a person money for attending to be put upon the register, it is a matter of inference that doubtless the persons who put the voter on the register expected him to vote for their party; no doubt that would be in their minds at the time.

“Doubtless if you were to pay a man direct for being put upon the register, and to offer a reward for every person who would himself come and be registered by the Conservative Association or the Liberal Association, as the case might be, it would not be as a matter of law that that would be a bribe for a vote; but it would be a matter of very strong observation, and there would be reasonable grounds for inferring that those who paid people belonging to any particular political party for coming and being put upon the register did expect, as part of what they were paying for, that they were to vote for that party when the election came. It would be a matter of fact, not of law, but the inference would be strong from it.

“When it is merely repaying them what might be called money out of pocket, the loss of a day's work, the inference is by no means so strong. It might be so or it might not be. In each case it would be a matter of

inference looking at the facts, and a very important fact would be, whether or no an election was pending or close approaching. It would require looking at that to see whether it was really or not paid to induce the votes, or whether it was really and *bonâ fide* a repayment for money out of pocket. I certainly think it would be a wise thing on the part of all people to avoid making such payments at any time; because certainly it is always open to the observation and inference that it may be for the corrupt practice of inducing the vote, and may therefore be considered bribery.

“In the present case, however, we have to go a great deal further than that. I think where it was *bonâ fide* it would not be a bribe; where it was intended to induce a vote, which would be a matter to be collected from the whole of the facts, it would be a bribe.” *Taunton, Judgments*, 353. See also *Hastings*, O’M. & H. 219.

E. *Agreement to procure Return.*

A corrupt agreement to procure a return, which was formerly the subject of a distinct enactment, 49 Geo. 3, c. 118 (now repealed), is now by the C. P. Act, 1854, s. 2, made bribery.

Agreement
to procure
return.

In the *Barnstaple case*, 2 P. R. & D. 336, it was proved that the sitting member entered into the following agreement with one C.: “I will pay £400 and £1000 within a week after the election at B.” C., it appeared, had been very

1850 & 1859

BRIBERY. active in a commission of inquiry held for the borough, and in averting its threatened disfranchisement, and had incurred expenses to the amount of £1400 in so doing; it was in respect of this bill that the above agreement was made.

C. swore that it was no part of the understanding that he should endeavour to procure L.'s return; but the committee held L.'s election void (*i*). *Rogers on Elections*, 10th ed., 225 (note *b*), 328.

In *Britt v. Robinson* (The Bristol Election Petition), 5 L. R. C. P. 503, where the case stated that on a single vacancy three candidates in the same interest had announced their intention of standing, and a test-ballot was resorted to to determine which of the three should stand, and it was admitted that whoever succeeded in the test-ballot would succeed in the ensuing election, it was unanimously held by the court that bribery at the test-ballot came under the provisions of s. 2, cl. 3, of the C. P. P. Act, 1854.

In the *Norwich case*, 23 L. T. Rep. N. S. 701, it was alleged that persons were hired to attend the nomination and hold up their hands for particular candidates; it was held by Keating, J., that if

(*i*) In the *Coventry case*, Willes, J., held that the fair payment of the expenses of a member, if he will stand, does not of itself constitute an illegality under the provisions of s. 2, although it constitutes a case calling for a full inquiry. According to the learned judge, if the inquiry had shown "that E. had agreed to give H. £5, he might say a farthing in point of law; if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which H. had with the electors of Coventry, and of advancing E.'s influence as a candidate at the election, it would have been bribery, and it would have avoided the election." *Coventry*, O'M. & H. 97.

agency had been proved it would have avoided the election, though he would have reserved the point.

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It should, however, be borne in mind that in this instance the chief point which governed the decision in the *Bristol case* (*supra*) was absent—viz., that the election would be entirely decided by the result of the corrupt act; for in the *Bristol case* it was admitted that the test-ballot would decide the election, whilst in the *Norwich case* it was not even suggested that the majority of hands at the nomination would materially influence the election.

F. *Payment of Travelling Expenses.*

In Counties.—Conveyances may be provided for voters; but no money may be paid to the voter to defray his travelling expenses.

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Payment of travelling expenses.

In counties.

By 21 & 22 Vict. c. 87, s. 1,

“It shall be lawful for the candidate or his agent, by him appointed in writing, to provide conveyance for any voter for the purpose of polling at an election and not otherwise; but it shall *not* be lawful to pay any money or give any valuable consideration to a voter for or in respect of his travelling expenses for such purpose.”

In counties, therefore, it is lawful to give railway tickets or provide conveyances for voters to the poll. The payment, however, of any money to the voter for travelling expenses would be illegal by the statute; and if shown to have been given in excess of the fare—for instance, under colour of payment for refreshment, loss of time, or day's

BRIBERY.

wages—would certainly amount to bribery. In any event it is an illegal payment, and might endanger the candidate's election.

“Practices which once prevailed to an extraordinary extent, by which, under various names, gratuities were given to voters under the pretence of paying the expenses to which they had been subjected, but which, in the event, amounted to nothing less than bribes to voters, and amongst other means of giving such bribes for voting, was excessive payment for travelling expenses.” *Guildford, Judgments*, 102.

In boroughs. *In Boroughs*.—The payment of expenses for conveying voters to the poll is an illegal payment within the meaning of the C. P. P. Act, 1854 (*k*), with the exception named in the statute forbidding the same.

Rep. Peop. Act, 1857, s. 36 :—

“It shall not be lawful for any candidate, or any one in his behalf at any election for any borough, except the several boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person ; and if any such candidate, or any person on his behalf, shall pay any money on account of the conveyance of any voter to the poll,

(*k*) *Seemle*, that the illegal payment would render the payer liable to the penalty named in the C. P. P. Act, 1854, s. 23.

such payment shall be deemed an illegal payment within the meaning of the Corrupt Practices Prevention Act, 1854" (l).

BRIBERY

There is no objection, however, to a candidate or his friends taking voters to the poll in their own carriages, provided no money is paid on account of such conveyance.

"Not that the payment is to be considered to avoid the election if made to a third person not a voter, and not to induce a voter to vote, though such a consequence would follow if the promise were made to a voter, but that it shall be unlawful to pay any money on account of conveyance either to the voter or any other person." *Coventry*, O'M. & H. 110.

G. *Charity and Charitable Gifts.*

Charity.

Charity.

Mr Justice Willes said—"The giving of a sovereign was a question of degree: If a sovereign was sent to every person on the register on the occasion of a birth or death in his family by a candidate at an election, it would be hard to come to any other conclusion than that the money was given with the view of obtaining votes. It was a very different question whether an isolated gift of the kind, in a case of great distress, was to be looked upon in the same light." *Windsor*, O'M. & H. 2.

(l) Scotland: 31 & 32 Vict. c. 48, s. 25. Ireland: 31 & 32 Vict. c. 49, s. 12.

BRIBERY.

Charitable
gifts.*Charitable Gifts.*

“When I find that charities are distributed in a borough by those who are expecting to contest it as candidates, and are distributed without check by the election agent of the borough, I am not charitable enough to draw any other conclusion than that they do it with the intention of giving the voters money in the hope and expectation that it will influence the future election; and there is the further very great danger attending it, that the knowledge they have been doing so will cause men at the future elections to give their votes in the expectation and hope that they will hereafter receive payment; when this is brought home to any person, I think it would undoubtedly mean corruption.”
Stafford, O'M. & H. 30.

Payment
to induce
personationH. *Payment to induce personation.*

Actual payment or promise of money to induce a person to personate a voter amounts to bribery.

In the *Lisburn case* (W. & B. 225) it was held that the payment of money to induce a person to personate his father who was dead, and vote, was bribery, *semble* within s. 2, cl. 3, C. P. P. Act, 1854. *Rogers on Elections*, 11th ed., 355.

In the *Coventry case* evidence having been given as to an attempt to induce a man to personate an absent voter, Mr Justice Willes remarked that it might, in his opinion, be laid in the petition that an agent of the member had got voters personated, and that that, if established, would be sufficient fraud at

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common law to set aside the election. *Coventry*, BRIBERY.
O'M. & H. 105.

I. *Wagers.*

Wagers.

There is one form of payment and receipt of valuable consideration after an election which does not seem to be affected in any way by the C. P. P. Act, 1854—viz., wagers. *Rogers on Elections*, 11th ed., 359, and *Allen v. Hearne*, 1 T. R. 56.

Where bribery exists to such an extent that the corruption is general, the election will be void at common law even where no agency is established. GENERAL BRIBERY.

“If there were general bribery, no matter from what fund, no matter by what person, though the sitting member or his agents had nothing to do with it, that would defeat the election upon the ground that it was not a proceeding pure and free as an election ought to be, but that it was vitiated and corrupted by an influence which, coming no matter from what quarter, had defeated the proceeding, and shown it to be abortive.” *Lichfield*, O'M & H. 26.

Lastly, Before dismissing the subject of bribery, it is important to notice that it is immaterial at what period any money was given or offered, provided it was with a view of influencing the election. Time when act committed immaterial.

“Much stress was laid upon the time of the revision, as if for a moment the idea seemed to pervade the minds of some parties that bribery is less bribery because

BRIBERY.

it was committed two months or two years before an election.

“Any act committed previous to an election with a view to influence a voter, no matter at what distance of time, with a view to influence a voter at a coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed the day before the election or the day of the election: nay, more, if a man commits bribery on the first week of a parliament, and if he sues for the suffrages of that constituency in the last week of the seven years which precede the dissolution, that act committed six years before can be given in evidence against him, and his seat will not hold an hour.” *Sligo, Judgments*, 144. O’M. & H. 302.

TREATING.

Treating—i.e., giving refreshments to voters at an election. This offence is defined by the C. P. P. Act, 1854, s. 4:—

“Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways and means on his behalf, at any time, either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision, to or for any person, in order to be elected, or for being elected, or for

the purpose of corruptly influencing such person, or any other person, to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit ; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect."

In was argued in the *Youghal case* (O'M. & H. 293, Common Law Rep. (Ireland) viii.), that "candidate at an election," as defined by 21 & 22 Vict. c. 87, s. 3, did not include acts done by the candidate before the dissolution. The Court, however, did not take that view, and construed the expression to mean any person who shall be elected or nominated.

To avoid the election, the treating must be shown to have been done with a corrupt (m) intention.

Must be done
with corrupt
intention.

(m) In the *Bodmin case*, Willes, J., said "that the promise of refreshment *in futuro* would be equivalent to a bribe within the 1st clause of s. 2, 17 & 18 Vict. c. 102, if it were made out quite apart from any question of corrupt treating that G. offered valuable consideration to the voters in order to induce them to vote or refrain from voting with reference to procuring food to be consumed *in futuro*." *Bodmin*, O'M. & H. 121. It would seem also, after the decision of Lush, J., in the *Brecon* (2) case, that to make treating after the election "corrupt," a previous understanding must have existed.

TREATING.

“When that eating and drinking take the form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes *corrupt*, and is forbidden by the statute. Until that arrives, the mere fact of eating and drinking, even with the connection which this supper had with politics, is not sufficient to make out treating.” *Coventry*, O’M. & H. 106.

“If the opening had been proved to the extent of a single pot of liquor being supplied to a single voter by any proved agent of the member under circumstances in which I could be satisfied that it was intended thereby to gain the vote of that man, this election must have been declared void.” *Tamworth*, O’M. & H. 83.

Also if it be done to gain popularity.

“And I think that, whenever the intention is by such means to gain popularity, and thereby to affect the election, or even if the case is, as very often perhaps it is, that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans and of the persons who take drink whenever they can get it for nothing (who are always a numerous body) they will become unpopular, and they therefore provided it in order to affect the election, when there is an intention in the mind either of the candidate or his agent to produce that

With the
object of
gaining
popularity.

effect, then I think that it is corrupt treating, and the seat ought to be considered vacated." *Wallingford*, O'M. & H. 58 (n). TREATING

It must be borne in mind, however, that the mere giving of refreshments is not a corrupt act of *itself* avoiding the election; although it is an illegal act punishable by a penalty to give them on the nomination (o) or polling-day. C. P. P. Act, 1854, s. 23 :—

When not corrupt, although illegal on nomination or polling day.

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"And whereas doubts have also arisen as to whether the giving of refreshments to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: Be it declared and enacted, that the giving or causing to be given any voter on the day of nomination or day of polling, on account of such voter having polled, or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit."

In O.M. Act
"Corrupt practice"

(n) If a publican supply drink to voters without orders and the candidate subsequently pays him, such ratification would probably be equivalent to the original treating. Per *Willes, J.*, in evidence before the select committee on Parl. & Mun. El. 445.

(o) The nomination is now by writing only. Ballot Act, 1872, s. 1.

TREATING.

Difference
between ss.
4 and 23.

The difference between these two sections, and how the transgression of them would affect the candidate, has been clearly laid down by the election judges :—

“It is for the petitioner to prove Mr F. was guilty of acting contrary to the 4th section of this act, otherwise his seat cannot be affected. It may be that votes were given to him which upon a scrutiny would be struck off ; it may be that the 23d section of the act of parliament has been violated, but there is nothing in the 23d section to affect the seat or status of the candidate, and he can only be affected by the 4th section. I am clearly of opinion that the argument addressed to me to the 23d section is unavailing ; it may prove that a penalty was incurred by giving refreshments upon the polling day contrary to the 23d section, but that has no relation to the 4th section except in so far that the same act is evidence that may be used to establish his proposition and show that something was done by F. that contravenes the 4th section ; therefore the question comes to this : Has that been proved to have been done ?” *Bradford, O.M. & H. 35.*

Also :—

“If to give a voter something to eat upon the day of polling had been in itself treating, the 23d section would have been unnecessary ; the 4th section, dealing with corrupt treating, would have been suf-

ficient to dispose of the case." *Bodmin*, TREATING.
O'M. & H. 123.

The practice of giving breakfasts or giving tickets for breakfasts, which principally exists in county elections, is clearly an illegal act within the meaning of s. 23, and *semble*, if done systematically, might furnish strong evidence that it was done *corruptly* within the meaning of s. 4; and in analogy to general corruption might avoid the election, more especially if any voters, who had not promised, or were doubtful voters, afterwards polled in favour of the candidate at whose expense they breakfasted. See the remarks of Martin, B., in "Election Accounts."

In the *York County, W. Riding (Southern Division)*, case, one of the allegations of treating was that breakfasts on the polling-day had been systematically given by the respondents. The case involving a scrutiny, the respondents were enabled to re-criminate, alleging (amongst other things) that breakfasts had been as systematically given on the other side. In the course of the trial all evidence with reference to the breakfasts was withdrawn.

In delivering his judgment, Martin, B., made these most important remarks:—

"It is perfectly clear that there has been conduct on both sides to which both sides had no idea that any objection could be taken; that is, entertainment was given to the voters upon the day of polling: both sides seem to have given it, and I think it was highly honourable that it was not insisted on against the successful candidates. It was the course that a

TREATING.

gentleman would take; having done it himself, he would not put it forward as illegal on the part of his opponents. Nevertheless, it was an illegal act, and I think a person standing in the position I do ought to say so. We must decide upon the act of parliament. I strongly recommend at any future election, that the parties look to the law, and the law alone, and take it as their guide; and however hard the law may be, and I am far from saying that it is not a hard law to comply with it, and not put their seats in jeopardy by doing apparently innocent acts, but which, by the express operation of this act of parliament, are declared to void their capacity to be elected." *York County, W. Riding (Southern Division), Judgments, 304.*

Reading sections 4 and 23 together, it would be advisable to avoid the giving of any refreshments on the nomination or the polling day even to those voters who have actively and gratuitously worked on those days for the purposes of the election, although, according to the judgment of Martin, B., in the *Bradford case*, O'M. & H. 39, and in the *Westminster case*, O'M. & H. 91, the giving refreshments to committee men and voters actually doing work on those days is not necessarily corrupt.

After the
election.

In the *Brecon case*, where with the sitting member's knowledge, *after* the election, meat and drink were given to voters who had voted for the sitting member, it was decided that to make the fact corrupt treating within the meaning of the C.

P. P. Act, 1854, ss. 2 and 4, it must be connected with some act done before the election.

TREATING.

“The treating which the act calls corrupt as regards a bygone election, must be connected with something which preceded the election—must be the complement of something done or existing before, calculated to influence the voter while the vote lies in his power; an invitation given before to an entertainment to take place afterwards, or even a promise to invite, or a practice of giving entertainments after an election which it may be supposed the voters would calculate on most if followed up by the treat afterwards, give it the character of corrupt treating.” *Per Lush, J., Brecon, Judgment.*

General treating is the supply of refreshments in such excessive quantities, with reference to the election, as to produce a general corruption of the constituency. In this case the election would be void at common law, even if no agency were proved.

GENERAL
TREATING.

“Had it been proved that there was general drunkenness throughout the borough, or any great part of it, though it could not be traced distinctly to the member or an agent of his, if it produced obvious demoralisation to such an extent which must have influenced the election by producing the vote of one or more of the constituency in favour of B. who would otherwise have

GENERAL
TREATING.

voted for P., if it had been established, I should have considered a strong case had been made to be rebutted on part of the respondent." *Tamworth*, O'M. & H. 85.

UNDUE
INFLUENCE.

This offence is defined by C. P. P. Act, 1854,

s. 5 :—

“Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten the infliction of, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of £50 to any person who shall sue for the same, together with full costs of suit.”

This statute has prohibited, in the clearest way, the use of any undue influence whatever, in order to secure, if possible, that a voter may exercise his own judgment, on being canvassed, without any selfish motives interfering with his decision. Section 5 applies both to acts or threats exercised in order to induce a voter to vote contrary to his inclination or to abstain from voting, or on account of a voter having voted or refrained from voting.

UNDUE
INFLUENCE.

In arriving at the conclusion what is really the intimidation forbidden by the statute, the provisions contained in s. 2 of the act should be considered with the view that, under general circumstances, whatever it is bribery to promise it is intimidation to threaten the deprivation of.

“Reading the 5th section by the light thrown upon it by the 2d, I can have no doubt that that which it would be bribery to promise the enjoyment of it, it is, in this case at least, and with reference to those circumstances, intimidation to threaten the deprivation. The thing answers to common-sense, and it seems to be within the intention of the legislature, whether you take the general language of the 5th section by itself, or whether you refer for interpretation to the provisions of the 2d clause of the 2d section.” *Westbury, O’M. & H. 52.*

Such acts and threats include equally—

A. *Withdrawal of Custom.*

Withdrawal
of custom.

“The legislature, in the 5th section, has used language which makes it undue influence

UNDUE
INFLUENCE.

to practise intimidation, directly or indirectly, with intent to influence the vote of a single voter, whether that voter be the person ill-treated, or whether the ill-treatment be violence or damage done by the removal of custom, or business, or employment, is immaterial, if it is done with a view to affect voter or interfere with the free exercise of the franchise, it is within the prohibition of section 5." *Blackburn, Judgments, 11.*

Eviction by landlord. B. *Eviction by Landlord.*

"Undoubtedly, when the election is over, a man may employ whom he pleases; but to make use of it as a threat during an election to withdraw his custom in order to influence the election is, I think, as clearly an infraction of the 5th section of the act as it would be if a landlord were to say to his tenant, 'If you do not vote for so-and-so I will turn you out of your house.'" *Reg. v. Barnwell, 5 W. R., per Campbell, C. J., 558.*

Spiritual
intimidation.

C. *Spiritual Intimidation.*

In the *Galway (County) case* it was ruled by Keogh, J., that the clergy were justified in exerting their legitimate influence over the minds of their congregations; but he stated that

"Undue influence would be used if ecclesiastics make use of their powers to excite superstitious fears or pious hopes; to inspire; as the object may be

best promoted, despair or confidence; to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness—that good or evil which is never to end. . . . He had to consider the case very fully at Drogheda (Judgments, pt. ii. p. 320), and there the election was declared void, not only by reason of general intimidation, but because of undue ecclesiastical influence brought home to the sitting member and his agent in one particular case.” Judgments, 66.

UNDUE
INFLUENCE.

D. *Threats by Fellow-Workmen.*

“I can conceive cases in which fellow-servants ill-treat one another, and even expel one another from the common place of employment, and they, unquestionably, are guilty of the offence against which the undue-influence clause of the C. P. P. Act is specially directed.” *Blackburn, O'M. & H.* 204.

Threats by
fellow-work-
men.

E. *Dismissal from Employment.*

“Now, whether I look upon this as a question of common-sense or a question of law, or as a matter of inference from the evidence which has been produced, I am obliged to come to the conclusion that expelling or wrongfully discharging voters shortly before a parliamentary election in consequence of their politics being different from those of their employers, does, at

Dismissal
from em-
ployment.

UNDUE
INFLUENCE.

least under the circumstances of the case, amount to undue influence, both direct and indirect, under s. 5." *Blackburn*, Judgments, 16.

Abduction of F. *Abduction of or Fraud on Voter.*
or fraud on
voter.

This section also prohibits using open force, or abducting, or what is vulgarly called "bottling" a voter, and the exercising any trick (*p*) or fraud upon the voter.

"I will take that which is probably the strongest case—that is, whether the old man G. was taken away by force and prevented from voting, so as to bring the case within s. 5 of the act of parliament." *York County, W. Riding (Southern Division)*, Judgments, 303.

Agent incit-
ing mob.

Animating a mob by exhorting them not to allow the other side to vote, if done by an agent, is enough to prevent the seat being held, even though it does not amount to general intimidation. See *Stafford*, Judgments, 295. *Semble*, an agent inciting a mob to prevent persons voting is within the literal meaning of s. 5.

GENERAL IN-
TIMIDATION.

Intimidation of any kind, including spiritual intimidation, and riot, will render an election void at common law, if it can be shown to have been so general as to influence the votes of the body of voters, and consequently preventing the real political feeling of the constituency from being ascertained, and agency need not then be proved.

"In order to avoid an election on the ground

(*p*) See also *Gloucester (post)* as to cards sent round before the election.

of intimidation and undue influence, GENERAL INTIMIDATION. either it must be shown that the rioting or violence was instigated by the member or his agents, for whom he is responsible, or it must be shown it was to such an extent as to prevent the election being an entirely free election." *Stalybridge*, O'M. & H. 72.

"If the evidence affected this return, it seems General riot. to me that it would affect it by reason of the common law, which, of itself, renders an election carried by violence, or force, or intimidation, void, because the freedom of election is violated and persons are prevented from freely exercising their franchise and giving their votes." *Cheltenham*, O'M. & H. 64.

"General intimidation, so that you may say it is evident the election was not a free one, in that case, though it is not brought home to the agent, the election would not be good by the common law of parliament." *Stafford*, Judgments, 295.

"General bribery will invalidate an election, General spiritual intimidation. even though it be not directly traceable to the candidate—I say that general treating will invalidate an election even though it be not directly traceable to the candidate; and I say above all things that general intimidation and undue influence, whether it is lay or ecclesiastical, whether it is the ecclesiastic of our persuasion or the ecclesiastic of another; whether it is the Protestant Episcopalian minister or the Presbyterian minister, or

GENERAL IN-
TIMIDATION.

the Roman Catholic priest, or the minister of any other of those innumerable sects which, I believe, are to be found existing over the face of the world, will upset every election at which it is practised.”
Galway (County), Judgment, *per* Keogh, J.

PERSONA-
TION.

Personation is a corrupt practice within the meaning of the Parl. El. Act, 1868, by the Ballot Act, 1872. The statutable definition of personation is contained in the same section of that act as follows, s. 24 :—

Definition of
personation.

“The following enactments shall be made with respect to personation at parliamentary and municipal elections : A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation, who, at an election for a county or borough, or at a municipal election, applies for a ballot-paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot-paper in his own name.”

INTERFER-
ENCE OF
PEERS.

Though the interference of peers, ministers, and other persons in the employment of the crown in elections is a breach of the privileges of the House of Commons, and a matter into which they would certainly inquire when brought under their notice, still such unconstitutional interference is no ground of impeaching the validity of the election. See Clerk's Practice of Election Committees, 93.

CHAPTER II.

AGENCY.

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AN agent is a person authorised by the candidate to act on his behalf in affairs connected with the election, and the candidate, *as regards his seat* (a), is as liable for acts committed by his agent as if he himself had been personally concerned therein; although the agent may not only have exceeded the authority committed to him, but have acted in opposition to the express commands of the candidate.

So extreme, in fact, is the liability of the candidate for his agent, that the relation between them

AGENCY.
Who is an agent.

How far principal liable for agent. ✓

(a) The distinction between the liability of a candidate for the acts of his agent as regards his seat, as distinguished from his liability with respect to penalties, is well pointed out in *Felton v. Easthope*, Sitt. after Trinity Term, 1822, referred to in *Rogers on Elections*, 10th ed., 338.

“If an agent bribes voters with or without the knowledge and direction of his principal, it will *avoid the election*; the principal is to that extent liable, *but not so* in an action for penalties; it must be proved to be done with the knowledge and authority of the principal.” *Per Abbott, C. J.*

J AGENCY. | is not analogous to that existing at common law between principal and agent.

“The rule of law has long been established, and has been ratified by acts, as I think, in parliamentary matters, we are not to consider the strict rule of common-law agency generally established to this extent, that a person is responsible for his agent in all that he does within the scope of his authority, but is not responsible for anything that he does beyond the scope of his authority. There is one exception in the case of the sheriff, but I may pass that by. So that the common rule of law would be, if you employed a man to do an honest thing and he chose to commit a crime, you would never be responsible criminally, but beyond that you would not be even responsible civilly for the crime committed when the instructions you gave him were to act as an honest man.

“But in parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though he himself did not only not intend or authorise it, but though *bonâ fide* he did his best to hinder it.” *Taunton, Judgments*, 354.

Relation between principal and agent similar to that between master and servant.

The liability of the candidate for the acts of his agent has close resemblance to that of the master for his servant.

“It is in point of fact making the relation

between a candidate and his agent the relation of master and servant, and not of principal and agent." *Westminster*, O'M. & H. 95. AGENCY.

The candidate is answerable for the acts of his agent in the same way as a master is answerable for the acts of his servant done in the course of his employment, whether lawful or not, notwithstanding a prohibition may have been given to him by his master.

"The relation of master and servant imposes upon the master a liability for an unlawful act done by the servant in the course of his employment, notwithstanding a prohibition which may have been given to him by his master; notwithstanding that the instant before an accident occurred he had impressed upon his servant or coachman the necessity for driving with the utmost possible care, if the next moment that man disobeys the order received from his master and inflicts an injury upon another, the master is responsible for it; and why? Because the relation of master and servant exists between them and creates this liability." *Wigan*, Judgments, 205; O'M. & H. 191.

"Fifthly, it was said, that although H. was an agent of the respondent, and did intimidate under 17 & 18 Vict. c. 102, s. 5, he did not intimidate as an agent, and that therefore his principal is not bound; and it was said by way of illustration of that view, that although a master is answerable for a

AGENCY.

negligent act of his servant in the course of his employment, he is not answerable for his wilful and spiteful act for his own purpose, not in the course of his employment ; and that might be carried further, because a master would not be liable to some person run over by his carriage driven by his coachman upon some errand of his own, entirely out of the scope of the employment of the master. There can be no doubt of that ; but I might put, on the other hand, a variety of other cases in which a principal is liable, even civilly, for an act of his agent which he never intended, and at which he is exceedingly displeased : the case of a bank held liable for the fraud of a manager or clerk ; the case of a person who employs a man to navigate his boat for hire held liable for the infringement of a ferry by the boatman without his authority and against his will ; and a case which occurred in London in the rivalry between the omnibuses, where the proprietor of an omnibus was held liable for the wilful act of his coachman in cutting in before another omnibus and injuring the vehicle and the horses, and, I think, one of the passengers, for the purpose of getting a fare, having in his mind at the time the compound motive of effecting his own spiteful desire, and, at the same time, of getting before the other omnibus to get a fare for his master. This case (*Limpus v. General Omnibus Com-*

pany, 32 L. J., Ex. Ch. 34) was very much considered in the Exchequer Chamber, and was held by a large majority of the judges to be a case of liability. Or I might put even the more apposite case of a man employing another to steer or assist in the management of his vessel in a race, where, by the act of one of the crew, wholly unauthorised by the employer, a foul takes place in wrong of a rival, and the employer's vessel wins; in such a case, even if it were proved to demonstration that notwithstanding the foul the race would have been won by the vessel on board of which the misconduct took place, it would surprise one if, by any rule, either of honour or of law, the prize was given to the vessel which was in fault: no innocence of the employer could have any effect upon his loss." *Westbury*, O'M. & H. 54.

AGENCY.

Agency terminates at the close of the election, except so far as the candidate may himself personally direct an agent to act. See "Practical Suggestions," and *Salford*, O'M. & H. 136-139.

Agency
when ter-
minated.

A candidate has been held answerable for acts committed by a person employed in a subordinate capacity by the agent for the purposes of the election on his own responsibility to the same extent as if those acts had been committed by the superior agent himself.

Sub-agent.

"The extent to which a person is agent differs accordingly to what he is shown to have done. I take it that an agent employed so

AGENCY.

exclusively (*i.e.*, having money intrusted to his care), as is shown here, does make the candidate responsible not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with.

“The analogy which I put to Mr G. in the course of the case I think is a strong one; but it would convey my meaning more to a lawyer than to the general public—the analogy of the liability of the sheriff for the under-sheriff, where he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-sheriff employs, and not only responsible for acts done by virtue of the mandate, but also for acts done under colour of the mandate; matters which have been carried very far indeed in relation to the sheriff” (*b*). *Bewdley*, O’M. & H. 19.

Limited
agency.

With respect to agents acting with a limited capacity, or with an authority limited by their superior, certain modifications as regards the liability of the candidate have been allowed. Thus—

“On the other hand, the act might be limited to the case of a person who was employed to canvass a particular voter or voters *only*, and then that person would be one whose authority being limited to such

(*b*) See *Stalybridge*, O’M. & H. 69.

voter or voters, his illegal acts in respect of *others* would not affect the member, because he would be only an agent in the *particular limited capacity*." *Bodmin*, O'M. & H. 120.

AGENCY.

"But I do not think that being asked to canvass two distinct and specific persons would make him a general agent, so that for anything else he might do the candidate would be made responsible." *Hereford*, Judgments 111 ; O'M. & H. 195.

If candidates coalesce, the agents of the one become the agents of the other.

Joint
agency (c).

"It happens that in this case W. and L. have stood jointly ; they have chosen to what we commonly call coalesce ; they united in a canvass, and in fact have made each one agent for the other ; and they have chosen to stand or fall together : consequently if any corrupt act is shown to be done by an agent appointed by one member it will affect both : such are the consequences of a coalition. A candidate is not only responsible for his own individual agent, but, having made a coalition, he becomes responsible for the acts of the agent of the other candidate with whom he has coalesced. W., therefore, as far as those matters are concerned, is exactly in the same position as L. If a corrupt

(c) Where the respective agents for two candidates jointly attended to the registration, but during the election did not act in concert, it was held that there was *not* sufficient joint action to constitute mutual agency. *Tamworth*, O'M. & H. 83.

 AGENCY.

act is brought home to the one, both are unable to hold their seats." *Norfolk (Northern Division)*, Judgments, 269; O'M. & H. 240.

The *Norwich* case was decided on the same principles. 23 L. T. Rep., N. S. 703.

Agency how
inferred.

What constitutes Agency; how it is proved; and what acts amount to proof.

Authorised
agent for
election ex-
penses.

There is not much difficulty in deciding who are the principal agents of a candidate; by 26 & 27 Vict. c. 29, s. 52, payments at an election must be made by an authorised agent. Such an authorised agent for election expenses would render the candidate liable for any act done by him in the course of the election. *Windsor*, O'M. & H. 8.

Besides the agent for election expenses, there are other paid persons whose names would appear in the detailed statement of election expenses under 26 & 27 Vict. c. 29, s. 4.

Paid agents
for the pur-
poses of the
election.

The mere fact of their names appearing in that statement as *paid* by the candidate for the purposes of the election would probably be held as sufficient evidence of their agency, unless they were merely employed and paid in some subordinate capacity such as that of a messenger or bill-sticker, &c. The candidate may be also bound by acts committed in the course of the election by other persons on his behalf, though not named in the election accounts and *unpaid*.

Inference of
agency.

Agency of this description is inferred from the conduct of the alleged agent with reference to the election.

"It is a result of law to be drawn from the

facts in the case and from the acts of individuals." *Sligo*, Judgments, 145. AGENCY.

"For an agent to bind another it is not necessary that there should be any payment : it is only necessary that the act done by the agent upon which the question arises whether it is to bind the principal should be an act done by the procurement of the principal." *Westbury*, O'M. & H. 55.

"There is always a great difference in my view in the degrees of agency. As you go lower down you require more distinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up, it is more as if the candidate had done it himself." *Hereford*, Judgments, 109.

"No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown that either with the knowledge of the member or to the knowledge of his agent who had employment from him a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent.

"It is by no means essential that it should be shown that a person so employed in order to be an agent for that purpose is paid in the slightest degree or is in the nature of being a paid person." *Bewdley*, O'M. & H. 17.

AGENCY.

A candidate's wife is his agent.

What constitutes agency.

A man's wife, if she interfere in the election, is *ipso facto* his agent. *Hastings*, Judgments, 235.

Any act, however trifling, is evidence of agency, and an aggregate of isolated acts will by their cumulative force constitute agency : though no one of them alone, if severed from the others, might be conclusive.

Exempli gratiâ :—

1. Being a member of the committee (*d*).
2. Canvassing alone, and with or without a canvassing-book (*e*).
3. Canvassing in company with the candidate (*f*).
4. Attending meetings and speaking on behalf of the candidate (*g*).

(*d*) This depends upon the size and nature of the committee. Being merely a member of a large committee of six or seven hundred people would only be a *very slight* element in the case ; being a member of a committee consisting of a limited number, formed for the special purpose of conducting the election, in whom faith and confidence were placed by the candidate, and between whom there existed some privity, would be a *very strong* element in the case. See the *Westminster case*, O'M. & H. 92.

(*e*) Canvassing alone is also a question of degree. It would be slight evidence of agency if done without request, but it would be strong evidence if either a canvassing-book was furnished to the canvasser by the candidate or his agents, or if he made a return of his voluntary canvass to the candidate's committee and that canvass was adopted by them. *Stalybridge*, O'M. & H. 70 ; *Lichfield*, O'M. & H. 25.

(*f*) This, again, is a question of degree. Should a candidate invite a person to accompany him on his canvass, to introduce him to the electors and to point out their residences, it would be strong evidence of agency ; but should he merely accompany the candidate as one of a numerous body who are in the habit of following the candidate on his canvass, it would be but slight.

(*g*) In the *Galway (County) case* (1872) it was held that where a meeting was called together with the knowledge of

5. Bringing up voters to the poll.

AGENCY.

What, per se, does not constitute Agency.

What does
not amount
per se to
agency.
Messengers.

A. Being employed as a messenger :—

“I do not think that B., who was merely a card-messenger, can be said to have been an agent.” *Windsor, O.M. & H. 3.*

B. Being messenger of a volunteer committee :—

Messengers
of volunteer
committee.

“But in such a case as this, where I am convinced that they were real *bonâ fide* volunteers, voters acting for themselves, not selected by the member or chosen by him at all, but really *bonâ fide* in a business-like manner, the voters of the district choosing sober and respectable men in whom they had confidence to be the head of their own department and acting together, a messenger who is sent by one of them is not so directly connected with the candidate or any of his recognised agents, as to make him responsible for his misconduct in offering a bribe.” *Stalybridge, O.M. & H. 72.*

“There might be put, proceeding still in the same direction, cases in which a person, although nominally and popularly a canvasser, would really be no agent at all. You might put the case, which I believe is not uncommon, and which I could

the candidate for his support, it made “every bishop, every priest, from the highest to the lowest, who acted at those meetings so called into existence by N.’s own acts, his agents, for the purposes of this election; and by their acts, words, and writings he must be bound.” (Judgment of Keogh, J.)

 AGENCY.

conceive might take place very easily in a county or other large constituency, without authority, properly speaking, to canvass at all; a person who, though called a canvasser nominally, was in substance not a man whose influence was relied upon, but was rather, upon the facts, a mere messenger sent round to know how the voters in the district meant to give their votes—a person sent round rather for information for his employer than with a view to his exercising any influence, either personal or by his powers of persuasion, upon the persons whom he was sent to ask how they meant to vote. And I can conceive that it would be very unjust, with reference to one of the latter class of persons, unless he were really proved to be an agent by other evidence, to make the member liable for what he did, to hold, in fact, that he was an agent at all.” *Bodmin*, O’M. & H. 120.

Canvasser
for independent
association.

- C. Being canvasser for an independent association :—Where one D. was a person who canvassed for a society called “The Working Man’s Conservative Association.” This society was assumed to be formed of working men, but next to nothing was subscribed to it by working men; all the rest of the funds of the society came from a subscription of £60 from the respondent himself (he withdrew

from the society, however, on becoming a candidate), two subscriptions from his partner, and various other sums from persons who subscribed, expecting the money to be expended in promoting their political views. The funds of this society were spent in canvassing persons to vote for the respondent; but the evidence was, that it was an independent agency, and that this body was acting on its own behalf:

AGENCY.

Martin, B., in his judgment, said, that upon this statement of facts, he should not hold D. to be an agent. *Westminster*, O'M. & H. 91.

D. Being employed to be objector-general at the revision of lists of voters :—

Objector at revision of lists.

“W. was the person employed by him (*i.e.*, the agent) to attend to the register, or to be the ‘objector-general,’ as he was called, that gave him no authority to bind Mr G. by an act of bribery.” *Wigan*, Judgments, 205; O'M. & H. 191.

Before, however, concluding the chapter on agency, it may be useful to state that no candidate can be held responsible for the corrupt acts of his agent, if he can show that his agent, though acting for him for the purposes of the election, has in reality sold himself to, and been in treaty with, the other side. See the evidence of Willes, J., before the Select Committee on Parl. and Mun. El. 441.

Fraudulent agent.

CHAPTER III.

PENALTIES (a).

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WHERE a judge has reported to the House of Commons upon an election petition, that a candidate has been *personally* guilty of bribery at such election, the following penalty will attach to the candidate; that is to say,—

PENALTIES
(PARLIA-
MENTARY)
ON CANDI-
DATE.

Personally
guilty of
bribery.

First. Election of that candidate void.

Secondly. Incapable of being elected or of sitting in the House of Commons for seven years from the date of his being found guilty.

Thirdly. Incapable for seven years of being registered as a voter or voting.

Fourthly. Visited with civil disability for seven years of holding any municipal office, any judicial office, or being a justice of the peace.

Parl. El. Act, 1868, s. 43:—

“Where it is found by the report of a judge upon an election petition under this act that bribery has been committed by or with the knowledge and consent of any candidate at any election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his

 PENALTIES.

being found guilty ; and he shall further be incapable during the said period of seven years—

- (1.) Of being registered as a voter, and voting at any election in the United Kingdom ; and
- (2.) Of holding any office under the act of the session of the fifth and sixth years of the reign of his Majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, or any municipal office ; and
- (3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace."

Personally guilty of treating or undue influence.

Where a judge has reported that a candidate has been *personally* guilty of treating or undue influence, that candidate's election shall be void ; and he shall be incapable of being elected to represent the same constituency during the parliament then in existence.

Personally guilty of personation.

Where a judge has reported that a candidate has been guilty of or abetted in personation, that candidate shall be incapable of being elected or sitting in parliament for such county or borough during the parliament then in existence.

Guilty of any corrupt practice by his agents.

Where a judge has reported that a candidate *by his agents* has been guilty of any corrupt practice, that candidate's election shall be void, and he shall be incapable of being elected to represent the same constituency during the parliament then in existence.

C. P. P. Act, 1854, s. 36 :—

PENALTIES.

“If any candidate at an election for any county, city, or borough, shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in parliament for such county, city, or borough, during the parliament then in existence.”

Ballot Act, 1872, s. 24 :—

“The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parl. El. Act, 1868. If on the trial of any election petition, questioning the election or return for any county or borough, any candidate is found by the report of the judge, by himself or his agents, to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in parliament for such county or borough during the parliament then in existence.”

In the *Coventry case*, O'M. & H. 105, Willes, J., considered that it might be laid in the petition that an agent of the member had got votes personated, and that, if established, would be sufficient fraud at common law to set aside the election.

Parl. El. Act, 1868, s. 46 :—

“For the purpose of disqualifying, in pur-

PENALTIES.

suance of the thirty-sixth section of The Corrupt Practices Prevention Act, 1854, a member guilty of corrupt practices, other than personal bribery, within the forty-third section of this act, the report of the judge (b) on the trial of an election petition shall be deemed to be substituted for the declaration of an election committee, and the said section shall be construed as if the words 'reported by a judge on the trial of an election petition' were inserted therein in the place of the words 'declared by an election committee.'"

Knowingly
employing a
corrupt
agent.

Where a candidate personally employs a canvasser or agent who, within the last seven years, has, to his knowledge, been convicted of any corrupt practices by a competent legal tribunal, or been reported guilty of any corrupt practices by—

- A. A parliamentary committee, or
- B. By a judge appointed to try an election petition, or
- C. Commissioners appointed under 15 & 16 Vict. c. 57,

that candidate's election is void (c).

Parl. El. Act, 1868, s. 44.

"If, on the trial of any election petition under this act, any candidate is proved to have personally engaged at the election to

(b) "Report of the judge," see *Norwich case*, 6 L. R. C. P. 147.

(c) There is no provision in this event against a candidate being re-elected for the same constituency during the parliament then in existence.

which such petition relates, as a canvasser or agent for the management of the election, any person, knowing that such person has, within seven years previous to such engagement, been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a Committee of the House of Commons, or by the report of the judge upon an election petition under this act, or by the report of commissioners appointed in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, the election of such candidate shall be void."

PENALTIES.

The following penalties will attach to any person other than the candidate found guilty of bribery in any proceeding in which, after notice of the charge, he has had an opportunity of being heard (*d*) ; that is to say,—

ON PERSONS
OTHER THAN
THE
CANDIDATE.Guilty of
bribery in
any proceed-
ing where
he has had
an opportu-
nity of being
heard.

First. Incapable of being elected or sitting in the House of Commons for seven years from the date of his being found guilty.

Secondly. Incapable for seven years of being registered as a voter or voting.

Thirdly. Visited with the civil disability for

(*d*) "The act speaks of 'an opportunity of being heard,' and I think that does not merely mean that kind of opportunity which a witness has who is called up upon the spur of the moment, and who is subject to cross-examination, but it means an opportunity of being heard when he has had a fair warning of the charge, and is asked to meet it and be heard by himself or his counsel." *Bewdley*, O'M. & H. 176.

PENALTIES.

seven years of holding any municipal office, any judicial office, or being a justice of the peace.

Voter convicted of bribery, treating, or undue influence, to have name expunged from the list of voters.

Another parliamentary penalty will attach to a person who is a voter criminally convicted of the misdemeanours of bribery or undue influence, or who has a judgment in a penal action recovered against him for bribery, treating or undue influence, viz., that the revising barrister may not only expunge him from the list of voters or disallow his claim, but, in addition, may insert his name in a list of persons disqualified for corrupt practices. C. P. P. Act, 1854, s. 6.

“Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim, and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled ‘The List of

Persons disqualified for Bribery, Treating or Undue Influence,' which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published (e)."

With reference to votes being void owing to corrupt practices, see "Scrutiny."

The briber, *i.e.*, a person offending against the provisions of s. 2 of C. P. P. Act, 1854, is, by that section, "liable to forfeit the sum of 100*l.* to any person who shall sue (f) for the same, together with full costs of suit."

The bribee, *i.e.*, a person offending against the provisions of s. 3 of C. P. P. Act, 1854, is, by that section, "liable to forfeit the sum of 10*l.* to any person who shall sue (f) for the same, together with the full costs of suit."

The *candidate* is the only person liable for the pecuniary penalties for treating, by s. 4 of C. P. P. Act, 1854. By that section "he shall forfeit the

(e) *Semble*, this would not include personation.

(f) Actions or suits in respect of the above offences must be commenced within a year after the offence has been committed. C. P. P. Act, 1854, s. 14. The action or suit must be brought in one of the superior courts. C. P. P. Act, 1854, s. 9. And under s. 35 parties to the suit are compellable to give evidence, though such evidence is not to be used against them in any criminal proceeding instituted under the act.

What the form of declaration is to be in such actions is specified by 26 & 27 Vict. c. 29, s. 6.

When the proceedings in an action may be stayed, see 26 & 27 Vict. c. 29, s. 7.

PENALTIES. sum of 50*l.* to any person who shall sue (*g*) for the same, with full costs of suit."

Undue influence. A person who unduly influences, by s. 5 of C. P. P. Act, 1854, is "liable to forfeit the sum of 50*l.* to any person who shall sue (*g*) for the same, together with full costs of suit."

Returning officer willfully contravening statute. By Ball. Act, 1872, s. 11, every returning officer, presiding officer, and clerk, who is guilty of any act wilfully against the statute, can be sued by any person aggrieved for 100*l.*, see *Jones v. Pickering* (Notes of the Week, L. T., June 14th 1873), also 7 and 8 Will. 3, c. 25, s. 6; 2 Will. 4, c. 45, s. 76; 6 Vict. c. 13, s. 97; Parl. El. Act, 1868, s. 48.^a

PENALTIES (CRIMINAL). By C. P. P. Act, 1854, ss. 2, 3, both the briber and the bribee offending against the provisions of the respective sections are "guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment."

Bribery. By C. P. P. Act, 1854, s. 5, persons using undue influence are guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment.

Undue influence.

The prosecution, whether by indictment or information, must be commenced within one year after offence committed. C. P. P. Act, 1854, s. 14, 26 & 27 Vict. c. 29, s. 5.

No indictment for bribery or undue influence can be tried at quarter sessions. C. P. P. Act, 1854, s. 10.

The form of indictment or information, both for bribery and undue influence, is specified by 26 & 27 Vict. c. 29, s. 6.

(*g*) See *ante*, note (*f*).

By 6 Vict. c. 18, s. 83, persons who knowingly personated voters were guilty of a misdemeanour; that section is now repealed, and by s. 24 of Ball. Act (*h*), 1872, the offence of personation and of aiding, abetting, or counselling personation is made a felony, and whoever, in a parliamentary or municipal election, *applies* for a ballot-paper, in the name of a living, dead, or fictitious person, or who, having voted before, *applies* in his own name at the same election for a ballot-paper, is deemed guilty of personation.

PENALTIES

Personation.

By this section the offence is complete the moment the elector *applies* for a ballot-paper, and even if a person *attempted to apply* for a ballot-paper, he could, on the indictment for the felony, be found guilty of the misdemeanour—*i.e.*, the attempt to commit a felony.

Although 6 Vict. c. 18, s. 83, is repealed, the other sections with reference to the proceedings which may be taken by the returning officer and the agents to detect personation at the poll are still in force, see 6 Vict. c. 18, ss. 81, 85-89. Under these sections the returning officer is empowered to order a person accused of personation into custody immediately after such persons shall have voted. It would be advisable therefore for the returning officer not to exercise the summary power entrusted to him by these sections until the personator has actually voted in accordance with the mode prescribed in rule 27 of Ball. Act, 1872.

Any irregularity, however, which might be committed by the agent to detect personation, or the

(*h*) Scotland, Ballot Act, 1872, s. 26.

PENALTIES.

returning officer, with reference to proceedings under 6 Vict. c. 18, would be no bar to a prosecution being instituted in the regular way under s. 24 of Ball. Act, 1872 ; it is, in fact, under that section the duty of the returning officer to institute one.

It is still competent for a person to be indicted for wilfully making a false answer to the questions put to him at the time of tendering his vote, and so to be found guilty of a misdemeanour under 6 Vict. c. 18, s. 81.

Seemle, although a felony, that the prosecution must be commenced within one year after the offence, 17 & 18 Vict. c. 102, s. 14 ; 26 & 27 Vict. c. 29, s. 5. There is no provision against an indictment for personation being tried at the quarter sessions.

By the Ball. Act, 1872, Gen. Rule xl., for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot-papers, an order may be obtained to inspect *rejected* ballot-papers.

By the Parl. El. Act, 1868, s. 16, on the report of a judge, the Attorney-General may institute a prosecution against persons reported guilty of corrupt practices in the same way as he was authorised by 26 & 27 Vict. c. 29, s. 9, to institute a prosecution against persons found guilty of bribery or treating (*i*) by the report of a committee or

(*i*) Treating is not a statutable misdemeanour, so that the only prosecution which the Attorney-General could institute would be one for a misdemeanour at common law, and it is doubtful if such a prosecution has ever been attempted. If endeavour were made to render any one guilty of treating criminally liable, the count would probably be substantially one of bribery, the means whereby the vote was sought to be influenced being, instead of money, meat or drink.

commission of inquiry into corrupt practices at any election. PENALTIES.

During the trial of an election petition before a judge (Parl. El. Act, 1868, s. 33), or proceedings before commissioners appointed under 15 & 16 Vict. c. 57, no witness is excused from answering any question relating to any corrupt practice connected with any election forming the subject of inquiry on the ground that the answer may criminate or tend to criminate him. But "if he shall answer (*k*) every question relating to the matter . . . which he shall be required . . . to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled (*l*) . . . to receive a certificate," under the hand of the judge or the commissioners (as the case may be), to that effect, and such certificate shall stay all

Witness entitled to a certificate of indemnity.

(*k*) The word answer in this section means "answer truly." *Reg. v. Hulme*, 5 L. R. Q. B. 377.

(*l*) In the *Bridgewater Election Commission case*, where the question was raised in the Court of Queen's Bench whether a *mandamus* will lie to Election Commissioners to grant a certificate of indemnity to a witness to protect him from legal proceedings, and it was urged that the decision of the commissioners on the subject was final, the rule for a *mandamus* was made absolute by Cockburn, C. J., Blackburn, Mellor, Lush, JJ., concurring; Cockburn, C. J., in giving judgment, saying, "that looking at the whole of the examination, and where the witness was treated with great unfairness in his examination, and with great injustice in the refusal of the certificate, he thought that a *prima facie* case had been made out which called upon the judges, in the exercise of their jurisdiction, to make the rule absolute for a *mandamus*, in order that if necessary the question might be further considered." The Attorney-General then entered a *nolle prosequi*.

In *Reg. v. Buttle*, it was attempted to prove the guilt of a prisoner on an indictment for perjury for evidence given before the election judge, by producing the true evidence

PENALTIES. proceedings against him, by information or indictment, for any offence under the C. P. P. Acts.

See 26 & 27 Vict. c. 29, s. 7 :

“No person who is called as a witness before any election committee, or any commissioners appointed in pursuance of the act of the session holden in the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by such committee or commissioners, on the ground that the answer thereto may criminate or tend to criminate himself : provided always, that where any witness shall answer every question relating to the matters aforesaid which he shall be required by such committee or commissioners (as the case may be) to answer, and the answer to which may criminate, or tend to criminate him, he shall be entitled to receive from the committee, under the hand of their clerk, or from the commissioners under their hands (as the case may be), a certificate stating that such witness was, upon his examination, required by the said com-

given by the prisoner on the same subject before the commissioners appointed under 15 & 16 Vict. c. 57.

But it was held that true answers before the Election Commissioners could not afterwards be used against a witness to support an indictment for perjury committed before another tribunal, such as an inquiry into the validity of an election before a judge. 1 L. R., C. C. R., 248.

mittee or commissioners to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or such question ; and if any information, indictment or action be at any time thereafter pending in any court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might have been prosecuted or proceeded against under such acts, committed by him previously to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action, and may at its discretion, award to such witness such costs as he may have been put to in such information, indictment, or action, provided that no statement made by any person in answer to any question put by or before such election committee or commissioners, shall, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal" (m).

(m) In the case of *Reg. v. Hamilton, Kinglake, and Lovibond*, a witness L. declined to answer a question on the ground that he might criminate himself by his reply—a pardon under the Great Seal was tendered to him. The

PENALTIES.

Corrupt
payment of
rates.

The corrupt payment of rates by the Rep. Peop. Act, 1867, s. 49, subjects both the payer and the payee to the same penalties with which bribery is visited.

Offences in
respect of

By the Ballot Act, 1872, s. 3 :—*Any person*

(a) Nomina-
tion-paper.

- | | | |
|---|---|-----------------------|
| 1. (a) Forging | } | Nomination-
paper, |
| (b) Fraudulently defacing | | |
| (c) Fraudulently destroying | | |
| (d) Delivering to the return-
ing officer forged know-
ing the same | | |

(b) Ballot-
paper.

- | | | |
|-----------------------------|---|---|
| 2. (a) Forging | } | Ballot - paper
or official
mark on any
ballot-paper, |
| (b) Counterfeiting | | |
| (c) Fraudulently defacing | | |
| (d) Fraudulently destroying | | |

3. Supplying a ballot-paper without authority,
4. Fraudulently putting into the ballot-box a paper other than the authorised ballot-paper,
5. Fraudulently taking a ballot-paper out of the polling-station,

witness, however, still declined on the ground a *qui tam* action was pending against him for penalties. Com. Dig. v. 5. (Pardon) was quoted in support of the witness.

Hannen, J., ruled that the pardon applied to proceedings on the part of the crown only, and that the action to which after the pardon the witness can remain liable was a liability to a debt or to a civil suit. 22 L. T. Rep. N. S. 316.

This view was afterwards concurred in by Cockburn, C. J., and Blackburn and Mellor, J.J., who also ruled that the privilege of refusing to answer questions on the ground that they tend to criminate is that of the witness alone, and no other party to the suit can take any advantage therefrom. 22 L. T. Rep. N. S. Q. B. 335.

- | | | |
|----------------------|----------------------|--------------------------|
| 6. (a) Destroying | } Without due autho- | PENALTIES. |
| (b) Taking | | city, with any ballot- |
| (c) Opening | | box or packet of ballot- |
| (d) Interfering with | | papers then in use, |

(c) Ballot-box.

is a misdemeanour.

Any person offending is liable, if

- (a) A returning officer, or officer, or clerk in attendance at a polling-station, to imprisonment for a term not exceeding two years with or without hard labour. (d) Infringement of secrecy.
- (b) Any other person, to imprisonment for a term not exceeding six months with or without hard labour.

An attempt to commit the offence is punishable in the same manner as the offence.

In an indictment or other prosecution for an offence in relation to

- (a) Nomination-papers,
- (b) Ballot-boxes,
- (c) Ballot-papers,
- (d) Marking instruments,
- (e) Counterfoils,

the property in the aforesaid may be stated to be in the returning officer at the election.

Any of these offences would not be punishable on summary conviction before justices.

By s. 4. of the act,

Any officer, clerk, and agent in attendance at a polling-station.

Communicating, before the poll is closed (except for some purpose authorised by law), any information as to the name or number on the register of any elector who

PENALTIES.

has or has not applied for a ballot-paper, or voted at that station, or as to the official mark ;

Any officer, clerk, and agent in attendance at the counting of votes,

- (a) Attempting to ascertain the number on the back of a ballot-paper at such counting ;
- (b) Communicating any information obtained at such counting as to the candidate for whom a vote is given ;

Any person whatsoever

- (a) Interfering or attempting to interfere with a voter when marking his vote ;
- (b) Attempting to obtain in the polling-station any information as to the candidate for whom any voter in such station is about to vote or has voted ;
- (c) Communicating at any time to any person any information obtained in a polling-station as to the candidate for whom any voter in such station is about to vote or has voted ;
- (d) Communicating at any time to any person any information as to the number on the back of the ballot-paper given to any voter at a station ;
- (e) Directly or indirectly inducing a person to display his ballot-paper after he has marked the same, so as to make known to any person the name of any candidate for or against whom he has marked his vote ;

is liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

ILLEGAL
PAY-
MENTS (n).

By C. P. P. Act, 1854, s. 23 (o), any person supplying refreshment to voters on the days of nomination or polling shall forfeit forty shillings for each offence to any person who shall sue for the same, together with full costs of suit (p). Supplying refreshment to voters on polling or nomination days.

By C. P. P. Act, 1854, s. 7, any person providing cockades, ribbons, or other marks of distinction shall forfeit forty shillings for every such offence to every person who shall sue for the same, together with full costs of suit; and all payments made on account of cockades, &c., bands or flags, shall be deemed illegal payments. Providing cockades, ribbons, &c.

By Rep. Peop. Act, 1867, s. 36, the payment of expenses of conveying voters in boroughs to the poll is an illegal payment within the meaning of the C. P. P. Act, 1854, and, *semble*, would render the payer liable to the penalty of forty shillings. Conveying voters to the poll.

By the Rep. Peop. Act, 1867, s. 11, if a paid elector vote, he shall be guilty of a misdemeanour. (See Corrupt Practices and Scrutiny.)

OTHER
PENALTIES.

Paid electors voting.

By s. 81 of 6, Vict. c. 18, any person wilfully

(n) With respect to bills, charges and claims on a candidate in respect of an election, sent in contrary to ss. 2 and 3 of 26 & 27 Vict. c. 29, see "Practical Suggestions (Election Accounts)."

(o) See "Corrupt Practices."

(p) *Semble*, that all the penalties imposed on illegal payments would be subject to the same limitations and would be recovered in the same manner as the penalties imposed on corrupt practices.

PENALTIES.

Wilfully
making false
answer to
returning
officer.

Returning
officer acting
as agent.

making a false answer to the returning officer or his deputy to the two questions which may be asked of a voter when he comes to the poll, shall be deemed guilty of a misdemeanour. See "Scrutiny."

By the Rep. Peop. Act, 1867, s. 50 :

"No returning officer for any county or borough, nor his deputy, nor any partner or clerk, or either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in parliament for such county or borough ; and if any returning officer, his deputy, the partner or clerk, or either of them, shall so act, he shall be guilty of a misdemeanour" (q).

By Ballot Act, 1872, s. 11, the above section applies to any returning officer or his deputy, appointed by him in pursuance of the Ballot Act, 1872, or his partner or clerk. Ireland, 31 & 32 Vict. c. 49, s. 13.

Making pay-
ment on
behalf of
candidate
otherwise
than
through
authorised
agent.

By 26 & 27 Vict. c. 29, s. 2 :

"No payment (except in respect of the personal expenses of a candidate) and no advance, loan or deposit shall be made by or on behalf of any candidate at an election, before or during or after such election, on account of or in respect of such election, otherwisethan through an agent or agents, whose name and address, or names and addresses, have been declared in writing to the returning officer on or before the day of nomination, or through an agent or

(p) With regard to this section, see the Scotch statute, 2 & 3 Will. 4, c. 65, s. 36.

agents to be appointed in his or their PENALTIES. place, as herein provided; and any person making any such payment or advance, loan or deposit, otherwise than through such agent or agents, shall be guilty of a misdemeanour, or in Scotland of an offence punishable by fine and imprisonment. It shall be the duty of the returning officer to publish, on or before the day of nomination, the name and address or names and addresses of the agent or agents appointed in pursuance of this section."

By the same act, s. 4 :

"A detailed statement of all election expenses incurred by or on behalf of any candidate, including such excepted payments as aforesaid, shall within two months after the election (or in cases where, by reason of the death of the creditor, no bill has been sent in within such period of two months, then within one month after such bill has been sent in), be made out and signed by the agent, or, if there be more than one, by every agent who has paid the same (including the candidate in case of payments made by him), and delivered with the bills and vouchers relative thereto, to the returning officer; and the returning officer for the time being shall, at the expense of the candidate, within fourteen days, insert, or cause to be inserted, an abstract of such statement, with the signature of the agent thereto, in some newspaper published or circulating in the county or place where the election was

As to publication of statement of election expenses.

PENALTIES.

held ; and any agent or candidate who makes default in delivering to the returning officer the statement required by this section, shall incur a penalty not exceeding five pounds for every day during which he so makes default ; and any agent or candidate who wilfully furnishes to the said returning officer an untrue statement, shall be guilty of a misdemeanour, or in Scotland of an offence punishable by fine and imprisonment ; and the said returning officer shall preserve all such bills and vouchers, and during six months after they have been delivered to him, permit any voter to inspect the same on payment of a fee of one shilling."

PENALTIES
ON CON-
STITUENCY.

Where a judge under the Parl. El. Act, 1868, s. 15, reports that corrupt practices have extensively prevailed in any constituency at the election to which the petition relates, both Houses by a joint address may pray her Majesty for an inquiry by means of a commission under the 15 & 16 Vict. c. 57. A joint address by both Houses to the same effect may also be presented under the circumstances stated in the Parl. El. Act, 1868, s. 56 :—

"If upon a petition to the House of Commons, presented within twenty-one days after the return to the clerk of the Crown in Chancery in England, or to the clerk of the Crown and Hanaper in Ireland, of a member to serve in parliament for any borough or county, or within fourteen days after the meeting of parliament, and signed by any two or more electors of

such borough or county, and alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both Houses of Parliament, praying that such allegation may be inquired into, the crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the statute of the 15 & 16 Vict. c. 57.”

PENALTIES.

Where a commission, appointed under the provisions of 15 & 16 Vict. c. 57, has reported that corrupt practices have extensively prevailed at an election, bills have been brought in founded upon the reports of the commissioners for the prevention of bribery in certain constituencies, and also for the disfranchisement of certain voters. These bills however fell through, as it was urged that an indemnity had been given to the voters who had given evidence of corrupt practices. But by 26 & 27 Vict. c. 29, s. 7, the certificate of indemnity can only be used as a protection from proceedings in the case of any indictment, information or action pending against any witness for any offence under the C. P. P. Acts (*r*).

(*r*) In the cases of Sligo and Cashel, Bridgewater and Beverley, in 1870, and certain voters in Dublin and Norwich in 1870 and 1871, mentioned in the reports of the judge and the election commissioners, were disfranchised.

PENALTIES.

Disfranchisement
of constituency.

Suspension
of writ.

Four boroughs were disfranchised by the Rep. Peop. Act, 1867, in consequence of the corrupt practices which had been reported to exist there extensively. (May's Parl. Prac., Ed. vi. 613.)

Where a seat is vacant, and general and notorious corruption has been proved to have prevailed at the last election, the House of Commons has frequently, for an indefinite time, deprived the constituency of its parliamentary privileges, by suspending the issue of writs, either—

- A. By a resolution to that effect. (May's Parl. Prac., Ed. vi. 611); or
- B. By negating any motion for a new writ, with a view to further inquiry. (Penrhyn C. & D. 56.)

PENALTIES
ON DIS-
QUALIFIED
PERSONS
SITTING AND
VOTING IN
THE HOUSE
OF COMMONS.

Persons
holding
offices and
places of
profit.

By 6 Anne, c. 7, s. 25, no person who shall have in his own name or in the name of any person or persons in trust for him or for his benefit, any *new* office or place of profit whatsoever *under the crown*, which at any time since the 25th October, 1705, shall have been created or erected or hereafter shall be created or erected; nor any person who shall be a commissioner or sub-commissioner of prizes, &c.; nor any person having any pension from the crown during pleasure shall be capable of *being elected* or of sitting or voting as a member of the House of Commons in any parliament which shall be hereafter summoned and holden.

By s. 26 the acceptance of an office of profit while a member makes the election void, but the holder may again be elected. *Semble*, however, that there is in this case no penalty under s. 29. (See App. and Chap. VI.)

S. 29 enacts, that if any person hereby disabled or declared incapable is returned, his return shall be void, and if he sit or vote he shall forfeit 500*l.*(s).

PENALTIES.

And also new offices in Ireland, erected since 33 Geo. 3, c. 41 (Irish Act), under 41 Geo. 3, c. 52, s. 5. By s. 6 such disabled persons shall forfeit 500*l.* for every day on which they shall sit or vote.

Pensioners from the crown during pleasure are Pensioners. incapable of being elected by s. 25 of 6 Anne, c. 7. Penalty the same as in s. 29 of that act.

Pensioners from the crown for a term of years are by 1 Geo. 1, stat. 2 c. 56, s. 2, (Ireland), 33 Geo. 3, c. 41, s. 1, liable to a penalty of 20*l.* for each day they sat or voted (*t*).

By 22 Geo. 3, c. 45, s. 1, 41 Geo. 3, c. 52, s. 4,

(s) In the *Cambridge case* (Rogers on Elections, 11th ed., 225), in 1866, the return of Mr F. was avoided on the ground that he held a new office of profit under the crown within the 25th section. It appeared that he had been appointed standing counsel to the Secretary of State in Council of India after the passing of the 21 & 22 Vict. c. 106, whereby the government of the territories of the East India Company was vested in the crown. Under s. 15 of that act, the Secretary of State in Council was required to submit to the Queen in Council a scheme for the permanent home establishment of the India Office, and the Queen in Council was to fix and declare what should constitute such establishment and what salaries should be paid to the persons therein. In the scheme submitted to and approved by her Majesty in Council was inserted the office of standing counsel, with a certain yearly payment (in the scheme called "salary") affixed to it, which Mr F. received, in addition to the usual fees of counsel. The committee avoided the return. It is to be observed that there was an old office of standing counsel to the East India Company, to which Mr F.'s office exactly corresponded.

An act to indemnify Mr F. (29 & 30 Vict. c. 20) was subsequently passed.

(t) By 32 & 33 Vict. c. 15, persons with Civil Service pensions or superannuation allowances are allowed to sit in Parliament.

PENALTIES.

Contractors
(u).

any person directly, or indirectly, &c. undertaking or enjoying in the whole or in part any contracts, &c., made with the commissioners of the treasury, commissioners of the navy, or victualling offices, &c., or generally on account of the public service, is disqualified from being elected or sitting.

By 22 Geo. 3, c. 45, s. 9, disqualified persons as aforesaid sitting or voting in parliament shall forfeit 500*l.* for every day on which they shall so sit or vote.

(u) See *Leominster and Maidstone cases*, Rogers, 11th ed., App.; *Thompson v. Pearce*, 1 B. & B. 25.

In *Royse v. Birley*, Manchester Election Petition, 4. L. R. C. P. 296, a contract was entered into in June, 1868, for the supply of goods for the public service of India. The contract was completely executed by the contractors by the delivery and acceptance of the goods by the 23rd October, 1868; but the contractors did not receive payment from the India Office until the 18th January, 1869. In the interval, viz., on the 18th November, 1868, one of the contractors was elected a member of the House of Commons:—

Held, That assuming the contract to be within 22 Geo. 3, c. 45, s. 1, it did not avoid the election.

Quere, A contract for the supply of goods for India, entered into with the Secretary of State for India in Council, is a contract for “the public service” within 22 Geo. 3, c. 45, s. 1.

A firm, in which a member of the House of Commons was a partner, sold and delivered goods for the service of a lunatic asylum which had been appropriated to criminal lunatics under the royal sign manual, pursuant to 23 & 24 Vict. c. 75, in ignorance that they were dealing with a government institution:—

Held, Not a disqualification within 22 Geo. 3, c. 45, s. 1.

In the case of Sir S. W. (Committees’ Reports, vol. VII, March 15, 1869), where a firm in which a candidate was a partner, sent a tender to the government stationery department, which tender was accepted and goods supplied by the firm accordingly; it was held a disqualification, although arrangements had been completed for a dissolution of partnership, and the deed was actually signed three days after the declaration of the poll.

The act of George III. does not extend to any subscriber to a government loan. See Report 1855 (401).

By 7 & 8 Will. 3, c. 25, s. 8, any person not of PENALTIES.
the full age of twenty-one years who sits or votes Infants.
in parliament is liable to the same penalties as a
person sitting or voting without having been chosen
or returned.

By 41 Geo. 3, c. 63, no person ordained priest or Clergymen.
deacon, nor any minister of the church of Scotland,
shall be elected ; and if he sit or vote he shall forfeit
500*l.* for each day he does so (*x*).

(*x*) By 33 & 34 Vict. c. 91 (The Clerical Disabilities Act 1870), any minister of the Church of England may execute a deed of relinquishment (s. 3), to be enrolled in Chancery, which frees him from his disabilities (s. 4), under 41 Geo. 3, c. 63.

CHAPTER IV.

SCRUTINY.

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WHEN the petition alleges that the unsuccessful candidate at the election had the majority of legal votes, and ought therefore to have been returned, the manner of ascertaining the truth of the allegation is by a scrutiny of the votes (a).

Electors on behalf of the candidate have the same right to claim the seat for him as the candidate himself (b).

“In the event of the candidate (C. D.) for whom the seat is claimed having been shown to have obtained the majority of legal votes, it will be the duty of the judge to state in his certificate to the speaker that A. B. (the sitting member) is unseated, and that C. D. ought to have been seated, and ought to have been returned, and should be returned now.” *Taunton, Judgments, 357.*

When an election petition claims the seat for one of the defeated candidates, and the judge on

(a) See *Galway (county) case*.

(b) A candidate claiming the seat would be eligible for another constituency before his claim is determined. *May's Parl. Prac., Ed. vii. 641.*

 SCRUTINY.

the trial of the petition decides that such candidate was duly elected, the judge's certificate is final, and a petition against the return of such candidate cannot subsequently be presented under the provisions of the Parl. El. Act, 1868, unless some *subsequent* case of personal bribery on the part of the sitting member should arise. (See Practical Suggestions and Evidence.) *Waygood v. James* (*Taunton case*, 4 L. R., C. P. 361); *Stevens v. Tillett* (4 L. R., C. P. 147).

Recrimina-
tory evi-
dence ad-
missible
when seat
is claimed.

Recriminatory evidence is admissible *when the seat is claimed*. Parl. El. Act, 1868, s. 53.

“On the trial of a petition under this act complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.”

Scrutiny
usually
entered into
after the
other
charges are
disposed of.

The inquiry by way of scrutiny is sometimes entered into before the other charges in the petition are disposed of, but this is not an expedient course, since it is possible that those defending the seat will, by the above section, be able to disqualify the candidate for whom the seat is claimed.

The general charges would therefore usually be gone into first by the petitioner, and, at the close of his case, the respondent's counsel proceeds not only to answer the charges brought against the respondent, but to open counter-charges against the petitioner.

If the petitioner is disqualified, a scrutiny of votes may still take place for the purpose of show-

ing that the respondent has not really a majority of legal votes, even though the respondent is declared not to have been guilty of corrupt practices.

SCRUTINY.

If petitioner is disqualified scrutiny may still take place.

“The question in the scrutiny would be which of these gentlemen had the majority of legal votes, and assuming the petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would be perfectly good votes, and the persons who were the supporters of the petitioner would have a right to have it determined whether or not the respondent was sent to parliament by a legal majority.”
York, West Riding (Southern Division), Judgments, 303.

“Against any member, therefore, who is elected in the first instance, any one directly interested may petition: if the petition does not claim the seat there is no recrimination allowed; but if the petition does claim it, the respondent is entitled to protect himself, and, before the scrutiny, prove a recriminatory case, and show that the election of the other candidate could not stand (c). It is true that, even if he proves it, the petitioner may still go into the scrutiny to turn out the sitting member.” *Waygood v. James, per Willes, J.*

List of Voters intended to be objected to.

Whenever it is intended to enter on a scrutiny

Parties on each side to make out lists.

(c) In that case, if the scrutiny were successful, the result would be a void election.

SCRUTINY.

the parties on each side, those defending as well as those attacking the seat, must deliver in lists of the voters intended to be objected to, in compliance with the General Rules, *Mich. Term*, 1868, vii., viii.

VII. "When the petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the court or judge (*d*) upon such terms, as to amendment of the list, postponement of the inquiry and payment of costs, as may be ordered."

VIII. "When the respondent in a petition under the act, complaining of an undue return and claiming the seat for some

(*d*) Under General Rules vii. and viii. of the Cor. Prac. Mun. El. Act, 1872, the Court of C. P., or a judge at chambers, can alone allow such lists to be amended, consequently the power which is given to a judge who tries an election petition under the Parl. El. Act, 1868, is not vested in a barrister appointed to try a municipal petition under the former act.

person, intends to give evidence to prove that the election of such person was undue, pursuant to the 53rd section of the act, such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court or judge, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered."

SCRUTINY.

Since the passing of the Ballot Act, 1872 (see s. 7 of that act), personation cases seem now the only ones in which votes can be tendered, and therefore sought to be added: it is advisable that such list of tendered votes should also be delivered in.

Lists of tendered votes.

The best way of preparing the lists is to form them into classes with headings containing the objections against the voters in each class.

Each ground of objection intended to be relied upon should be distinctly stated and the name of the voter accurately inserted, together with his number, on the register. (See forms, Appendix.)

In cases of scrutiny the inquiry into each vote is a separate case, and is opened, answered, and decided upon by itself.

PRACTICE IN
CASES OF
SCRUTINY.

PRACTICE IN
CASES OF
SCRUTINY.Each vote
treated as a
separate
case.In what
order cases
taken.

The petitioner begins with any class of votes he pleases, and having finished that class proceeds to another (*e*); and when he has established a majority, either by striking off or putting on votes, the sitting member proceeds to reduce it by taking class after class in the same manner, and so they continue *alternis vicibus* till one is exhausted.

In the *Oldham* case, where H. and P. were the sitting members, and the seat was prayed on a scrutiny for C. and S., the numbers polled for the respective candidates being—

H.	..	..	6140	|	C.	..	..	6116
P.	..	..	6122	|	S.	..	..	6084

it was suggested that the simplest course would be to proceed in the first instance with the scrutiny as between C. and P., and that when they had placed C. in a majority over P., they should then proceed with the case as between S. and H. Blackburn, J., assented to that course as being a convenient one. *Oldham*, O'M. & H. 151.

When the
name of the
voter ap-
pears in se-
veral classes
of objec-
tions.

It frequently happens that a voter is objected to on several different grounds, and that his name is inserted in different lists according to the particular class of objection. In the *second Bewdley* case the course pursued was, where the name of the same voter was inserted in different classes of objections, no evidence with reference to his vote was gone into except as regarded the class then under consideration. If his vote was allowed, and his name

(*e*) It was usual before committees to require one class of objections to be concluded before another was entered upon, and it is therefore competent for the judge to require this convenient practice to be adhered to. *Per* Willes, J., *Northallerton*.

again appeared in another class of objections, evidence was again taken as to the validity or invalidity of his vote as regarded the class then under consideration.

If at any time the sitting member withdraws from the inquiry, the petitioner must continue to strike off votes until the person for whom the seat is claimed is in a majority.

If sitting member withdraws from inquiry, scrutiny may still continue.

In the *Norwich case*, where S. had been unseated, and it was argued that, in consequence, he had no further *locus standi*, Martin, B., said, "Is not S. a respondent in respect of every matter that you charge in your petition, and in respect of every claim you make in your petition? and has he not a right, as having been a candidate, and though he may be unable to protect his own seat, to show that you are not entitled to it?" *Norwich*, 19 L. T. Rep., N. S. 620.

The votes struck off on a scrutiny are of two classes—

VOICES
STRUCK
OFF ON A
SCRUTINY.

- (a.) Votes of persons on the register who have complied with all the conditions necessary for registration and voting, but who by their own conduct as regards the election have forfeited their right to vote. All these instances will be found fully arranged under the heading of VOTES VOID FROM CIRCUMSTANCES OF THE ELECTION, p. 82.

Their titles are as follows:—

Void from
circum-
stances of
the election.

- (1.) Bribers.
Persons bribed.
- (2.) Treaters.
Persons treated.

VOTES
STRUCK OFF
ON A
SCRUTINY.

Votes void
from legal
incapacity.

(3.) Intimidators.

Persons intimidated.

(4.) Procurers of personation.

(5.) Persons employed at an election for hire.

(6.) Returning officer.

(7.) Personators.

(b.) Votes of persons on the register who are disqualified under the Ballot Act, 1872, s. 7, but whose names have been allowed to remain on the register, or whose disqualification has arisen since registration. The disqualifications are of a personal character, and their titles will be found in note (k), page 88, under VOTES VOID FROM LEGAL INCAPACITY.

Under the same heading there will be treated—

Loss of qualification since registration.

Non-residence since registration.

Non-payment of rates.

In which three latter cases the register will be conclusive of the right, as they are not personal disqualifications.

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

Bribers and
persons
bribed.

The votes of persons bribing and persons receiving bribes are both void (although there is no statutory provision making them so, now that 26 & 27 Vict. c. 29, s. 8, is repealed by Parl. El. Act, 1868); for as such votes contravene the C. P. P. Act, 1854, they would seem on common law principles to be void; and Willes, J., in the *Windsor case* said, "A bribe by anybody, if proved, will defeat the vote." *Windsor*, 19 L. T. Rep., N. S. 613. Also in the *Norwich case*, where Martin, B., said, "Every bribed vote would of course be struck off." *Norwich*, 19 L. T. Rep., N. S. 621.

This principle would also apply to any of the indirect modes of bribery set out in the chapter on Corrupt Practices, inasmuch as it seems that what would avoid an election ought *à fortiori* to avoid a vote. *Per Willes, J., Southampton (f).*

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

Indirect
modes of
bribery.

Votes of treaters would be void on precisely the same footing as bribers, the one being corruption from money, the other by means of meat and drink.

Treaters.

Votes of persons treated are void by the C. P. P. Act, 1854, s. 4.

Persons
treated.

Votes of persons intimidating would be void, as being votes contravening the provisions of the C. P. P. Act, 1854, s. 5, and would therefore seem (on reasons analogous to those which avoid the votes of persons guilty of bribery) on common law principles to be void. *Per Willes, J., Northallerton.*

Intimi-
dators.

The votes of persons intimidated are void, as being influenced in such a manner by the representations made or the acts done as to be given not of their own free-will.

Persons in-
timidated.

Where J. B. was told by his employer's son if he voted for C. and P. he must stand the consequences (by which he understood he would be dis-

(f) In order to render the votes of persons contravening the provisions of the Rep. Peop. Act, 1867, s. 36, by the illegal payment of expenses of conveying voters in boroughs to the poll, such payment and conveyance must be shown to be corrupt, and therefore amounting to bribery.

In order to make the votes of persons contravening the provisions of the C. P. P. Act, 1854, s. 23, void, by the illegal giving of refreshments on the nomination day (which is now virtually abolished, see Ballot Act, 1872, s. 1), or polling day to voters, such giving of refreshments must be shown to be corrupt, and therefore amounting to treating.

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

But may not
be added.

missed if he did so), so, in consequence, he voted for H. and P. :—

Blackburn, J., ordered the vote to be struck off from H., but *refused* to add one for C. *Oldham*, O'M. & H. 161.

Where D. intended to vote for C. and S., but on the polling day a note was put into his hand by L., who said it came from D.'s master, the note containing the words, "Those who don't vote the way their master wishes them will be discharged," and D. voted for H. and P. There was no evidence the note was genuine :—

Blackburn, J., said, "The question was whether the man's vote was influenced in such a manner by the representation made to him that he gave it under protest," and struck off the vote. *Oldham*, O'M. & H. 161.

Procurers of
personation.

The votes of those who aid, abet, counsel, or procure personation would seem to be void, on the same principle as the votes of bribers, though equally there is no statutory provision making them so. See p. 82.

Persons em-
ployed at
elections for

By the Rep. Peop. Act, 1867, s. 11, no elector employed for hire for the purposes of the election shall be entitled to vote. The vote of an elector under those circumstances will be clearly void. At Southampton, Willes, J., expressed an opinion that the employment of the child of a voter under his parent's control, so that he could command the wages his child was to receive, was in effect employment of the voter (*g*).

(*g*) For what employments incapacitate, and what do not, see "Corrupt Practices."

By the Ballot Act, 1872, s. 2, a returning officer may not vote, except in case of a double return, when he may give a casting vote.

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

The vote of any person who is not really the voter on the register, but who pretends to be such voter, and is entered on the "Tendered Votes" list, under s. 27 of the Ballot Act, 1872, will not, on proof of the facts, be reckoned; and where the true voter has been personated at the election, and afterwards comes to vote himself, his vote must also be entered on the "Tendered Votes" list, under s. 27 of the Ballot Act, 1872.

Returning
officer.
Personators.

It should be borne in mind that if a person's name is on the register in a duplicate form, if he attempts to vote again after he has voted in respect of one qualification, he would fall within the provisions of s. 24 of the Ballot Act, 1872, and be deemed guilty of personation.

Before leaving the subject of votes void from the circumstances of the election, attention must be called to the 25th section of the Ballot Act, 1872, enacting that one vote shall be struck off the poll, on a scrutiny, for each voter corrupted by a candidate or his agents, or where a person employed for reward has voted. It might plausibly be argued that the provisions of this section (*h*)

Vote struck
off for brib-
ery, treat-
ing, or
undue influ-
ence, &c.
(25th s. Ball.
Act, 1872.)

(*h*) This section was framed to meet a system of scrutiny of a totally different character to the one now in the Ballot Act. By the scheme originally embodied in the bill, it was proposed that the ballot should be entirely secret, without power of following the votes by means of counterfoils, and the only means whereby a petitioner claiming the seat could acquire it without a fresh election was by help of the provisions of the 25th section. When the House of Lords introduced the present system of counterfoils, afterwards

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

excluded a corrupted vote being struck off *unless* the corruption was traced to the candidate or his agents, thus altering what has always been the law of parliament—viz., that a corrupted vote shall be struck off at once, it being immaterial whether the corruption is traced to the candidate or his agents. Or it might, on the other hand, be construed as having a cumulative force—i.e., if bribery of a vote be traced to a candidate or his agent, not only shall the vote itself be void, but the sum total of votes shall be diminished by one as a species of penalty, though it is difficult to see how such an argument could be supported, as the candidate is disqualified by the first act of corruption, and the only result would be that a petitioner who had not the legal majority of votes might gain the seat, thereby punishing only the constituency. It will, however, be probably construed as only declaratory of the existing law, the more so as the Rep. Peop. Act, 1867, s. 11 (see *infra*), had already forbidden persons employed at an election for hire from voting.

VOTES VOID
FROM LEGAL
INCAPACITY.

Until the passing of the Ballot Act, 1872, the committees, and afterwards the judges under the Parl. El. Act, 1868, refused to entertain any objection to a voter which had not been raised and decided upon by the revising barrister. Their decisions were governed by 2 & 3 Will. 4, c. 45, s. 60, and 6 Vict. c. 18, s. 98, as to England, and by 13 & 14 Vict. c. 69, s. 104, as to Ireland, and

adopted by the Government, this section became wholly unnecessary, but having remained in the act, some construction will have to be given to it on a trial. (See also Ballot Act, 1872, Gen. Rule 42.)

by 2 & 3 Will. 4, c. 65, s. 25, as to Scotland (i). VOTES VOID
FROM LEGAL
INCAPACITY.
By these acts it was enacted, that a committee might decide upon the right of any person to vote whose name was on the register, or who had tendered his vote, if his name was not on the register, in the following cases :—

- (a.) When the name had been specially retained upon the register, or inserted therein or expunged or omitted therefrom, by the express decision of the revising barrister.
- (b.) When the vote might be disputed on the ground of legal incapacity at the time of voting under and by virtue of any statute now or hereafter to be in force, or on the ground of any other legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time allowed for making out the list of voters.

Otherwise the register was conclusive of the right to vote.

However, under the Ballot Act, 1872, the before-quoted portions of the acts referred to were all repealed, and in their place the only statutable enactment is contained in s. 7 of that act :—

“ At any election for a county or borough a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot-paper, and to vote : *Provided that nothing in this section shall entitle any person to vote who is*

(i) Now all repealed.

VOTES VOID
FROM LEGAL
INCAPACITY.

prohibited from voting by any statute, or by the common law of parliament, or relieve such person from any penalties to which he may be liable for voting."

In the absence of any express authorities, it is suggested that the procedure by the judges (see 2 & 3 Will. 4, c. 45, s. 75, and Parl. El. Act, 1868, s. 26) for the future will be assimilated to that in force before committees of the House of Commons before the passing of 2 & 3 Will. 4, c. 45, now that s. 60 of that act, and s. 98 of 6 Vict. c. 18, are repealed—viz., that *any name*, if the disqualification be of a personal nature (*k*), on the poll can be impeached, whether the incapacity existed at the time of the last registration, or has arisen since, the fact of any objection having been taken or not being immaterial. This seems to have been the system practised by the earlier election committees on a scrutiny. See the lists in *Middlesex case*, 2 Peck. 1. See also the *Bedford case*, 1833 (Cockburn and Rowe, 1), where the point was most exhaustively argued by both sides as to the power of the committee to inquire into the validity of *all* votes on the poll; and it appears to have been substantially admitted by both sides that the powers of the

(*k*) Persons who are prohibited from voting (s. 7 of the Ball. Act, 1872), and in whose case the register would not be conclusive of their right to vote, whether the disqualification accrued before or after registration, are—women, lunatics, aliens, peers, minors; those who hold disqualifying offices, or who are employed for hire at an election, returning officers, recipients of parochial relief, traitors and felons (who are disqualified by 33 & 34 Vict. c. 33); persons who have been found guilty of corrupt practices (see Penalties); but in all these cases the presiding officer cannot refuse to deliver a ballot-paper, if the person's name is on the register, though if he votes his name be cut off on a scrutiny.

committee were only *expressly* curtailed by the sections of the Reform Act *now repealed*. And see also the *Inverness-shire case*, 1835 (K. & O. 311, note *t*), where it was stated that a bill had been framed (which, however, never became law) to restore the *old* jurisdiction of committees. The clause was as follows :—

VOTES VOID
FROM LEGAL
INCAPACITY.

“Be it therefore enacted and declared that it shall be lawful for such committee, and they are hereby empowered, to examine into and decide upon the validity and invalidity of the votes of *all* persons appearing in such register, *whether the same shall have been objected to* before the barrister applied to revise such votes *or not*.”

The cases of voters being disqualified from personal causes will be found very fully detailed in Rogers on Elections, 10th ed. pp. 165–93; but it may be useful to notice here some of the instances, as showing the views entertained by the election judges.

In the *second Bewdley case*, O'M. & H. 175, where the vote of a borough constable was objected to, it was declared void on the ground of legal incapacity by virtue of a statute, though no objection had been taken before the revising barrister, and he had been on the register since 1832 (*m*).

Borough
constable.

(*l*) It should be mentioned that s. 59 of 2 & 3 Will. 4, c. 45 (Reform Act), enacting that persons excluded from the register by the express decision of the barrister may tender their vote at elections, is repealed by the Ballot Act, 1872, and by the words of s. 7 of the Ballot Act it is expressly enacted that no person shall vote unless his name is (already) on the register. *Seem*, that the register is absolutely conclusive as to the exclusion of a vote.

(*m*) By 31 & 32 Vict. c. 73, certain officers employed in the collection of revenue may vote. (Irish) 33 Vict. c. 11.

VOTES VOID
FROM LEGAL
INCAPACITY.

Infants and
aliens.

Receipt of
alms.

What alms
disqualify.

Medical re-
lief for child
of voter un-
der sixteen ;

—on wife's
application
without
sanction of
husband.

Funeral
expenses.

In the *Oldham case*, O'M. & H. 159, Blackburn, J., said, if necessary, he would reserve the point for the Court of Common Pleas, in the case of infants and aliens, when no objection had been taken to them before the revising barrister.

By 2 & 3 Will. 4, c. 45 (Reform Act, 1832), s. 36,

“No person shall be entitled to be registered in any year as a voter in the election of a member of parliament for any *city* or *borough* who shall, within twelve months previous to July 31 in such year, have received *parochial relief* or *other alms*, which by the law of parliament now disqualify from voting in the election of members to serve in parliament.”

This section applied only to borough votes ; but now by the Rep. Peop. Act, 1867, s. 40, receipt of alms is a disqualification in counties as well as boroughs (*n*).

The voter is equally disqualified whether the relief is given to himself or to some one whom he is by law bound to support ; thus in the four cases following the vote was struck off :—

When medical relief was ordered by the relieving officer for the child of a voter. *Oldham*, O'M. & H. 160.

When medical relief was given to a voter's child on the wife's application, but without the voter's knowledge. *Second Bewdley*, O'M. & H. 176.

Where a coffin was provided by the parish to a voter to bury one of his children in. *Oldham*, O'M. & H. 161.

(*n*) Scotland : 31 & 32 Vict. c. 48, s. 50. Ireland : 13 & 14 Vict. c. 69, s. 3.

When relief was given to a voter for funeral expenses. *Northallerton*, O'M. & H. 171.

VOTES VOID
FROM LEGAL
INCAPACITY.

On the other hand, votes were retained in the cases following :—

What alms
do *not* dis-
qualify :—

When relief was given to the parents of a voter. *Oldham*, O'M. & H. 159.

Relief to
parents;

When relief was given to the grandchildren of a voter, even if living with the voter. *Oldham*, O'M. & H. 160.

—to grand-
children ;

When relief (o) was given to a deaf and dumb child maintained at the deaf and dumb school out of the funds of the guardians at the union. *Oldham*, O'M. & H. 160.

—to deaf
and dumb
child.

Payment of school fees is not parochial relief by 33 & 34 Vict. c. 75, s. 25.

Payment of
school fees.

Where J. S., a voter, had an order for a coffin and dues to bury his wife from the relieving officer, on the understanding it should be paid back by instalments, which were repaid, but not till after the election : Blackburn, J., retained the vote, but intimated that, if necessary, he would reserve the point for the Court of Common Pleas. *Oldham*, O'M. & H. 161.

Loan by re-
lieving offi-
cer.

Where medical relief was ordered by the police authorities in consequence of the voter having been assaulted, and the relief was paid for by the county, the vote was retained, on the ground the relief was police and not parochial. *Oldham*, O'M. & H. 160.

Medical re-
lief ordered
by police
authorities.

This last decision seems to show that private

Private
charities.

(o) See 4 & 5 Will. 4, c. 76, s. 56, as to children being "blind, or deaf and dumb," with respect to parochial relief being viewed as on a different footing to other pauper children of similar age.

VOTES VOID
FROM LEGAL
INCAPACITY.

charities would not amount to "such other alms" as by the law of parliament now disqualify.

The old decisions by committees were conflicting on this point (see Rogers on Elections, 10th ed. 181), and the actual question did not arise before the judges under the Parl. El. Act, 1868; the principle which would appear to govern the decisions would seem, however, to be, whether or not the charity was meant to be in aid of the general parish rate or not. See *R. v. Halesworth*, 3 B. & Ad. 724, *per* Tenterden, C. J.

Receipt of
alms *before*
registration.

By the Reform Act, 1832, s. 36, and by the Rep. Peop. Act, 1867, s. 40, no person is entitled to be registered who within twelve months previous to July 31 in each year shall have received parochial relief, &c.

This section (36) of the Reform Act expressly recognises the disqualification created by the common law of parliament arising out of the receipt of alms by a voter; it remains, however, now to be seen what effect the receipt of alms would have on a vote either—

(a.) Before registration, with or without an objection being taken before the revising barrister.

(b.) After registration, and before polling.

The provisions of 6 Vict. c. 18, s. 98, disqualifying a voter who has received parochial relief, &c., between July 31 and the day of election—*i.e.*, subsequent to the time allowed for making out the list of voters from which the register in force at the time of the election has been formed—being now repealed, it is submitted that the procedure before the judges will be governed by the same

principles as were formerly in force, before the Reform Act, 1832, respecting the re-opening of the register—viz., that as by the common law of parliament receipt of alms within twelve months previous to the election disqualified the voter (see *Middlesex*, 2 Peck. 1, and *Cricklade*, 2 Luders. 365), so now any vote, even if on the register, will be struck off in which relief has been granted within a year before the election.

VOTES VOID
FROM LEGAL
INCAPACITY.

In the *Oldham case*, Blackburn, J., said that parochial relief after July 31 annulled the vote: the nearer the time of receiving relief to the time of the election, the stronger the disqualification. *Oldham*, O'M. & H. 154.

In cases where there is no personal disqualification, but where the property which entitles the owner to vote has been parted with since registration, such as the giving up of the qualification in a county, or cessation of residence in a borough, it was the practice both before and after the Reform Act, 1832, to strike off a vote given under those circumstances (*Middlesex case*, 2 Peck. 1; *Carlrow*, F. & F. 75; *New Windsor*, K. & O. 156), until the provisions of 6 Vict. c. 18 (now repealed), continued the then prevailing practice.

PARTING
WITH QUALI-
FICATION,
AND NON-RE-
SIDENCE
SINCE REGIS-
TRATION.

Vote form-
erly struck
off.

As there have been no express decisions since the passing of the Ballot Act, 1872, it is impossible to state with certainty whether a vote given under such circumstances as aforesaid will be valid or the contrary. It will be seen in the 3d, 4th, 5th, and 6th sections of the Rep. Peop. Act, 1867; the words are as follows:—

“Every man shall be entitled to be registered as

PARTING
WITH QUALI-
FICATION,
AND NON-
RESIDENCE
SINCE REGIS-
TRATION.

a voter, and when registered to vote, who is qualified as follows, that is to say," &c.

The sections will bear two constructions—

- (1.) That the conditions mentioned in the section are the conditions precedent to registration only, and if registered, no subsequent loss of qualification will invalidate the vote, so long as there be no express disqualification by statute or common law of parliament (*vide infra*).
- (2.) That compliance with the provisions stated in the section entitle the compliant to a vote, provided he has previously been registered as a voter, without which that right is not complete, and that although registered, if the individual has parted with his qualification as aforesaid, an essential condition precedent being uncomplied with, the fact of registration only will not render a vote valid which would otherwise be invalid.

Now re-
tained.

It is, however, submitted with confidence, that the fact of the repeal of 6 Vict. c. 18, s. 79, so far as the enactment that a vote shall be invalidated by loss of qualification or non-residence after registration, whilst the remainder of the section, enacting the finality of the register, is retained, coupled with the terms of the Ballot Act, 1872, s. 7, will be sufficient to change the hitherto existing procedure, and to make it for the future the practice in cases of scrutiny not to allow objections on the grounds of (in the case of counties) a qualification having been parted with since registration,

and (in the case of boroughs) non-residence since the same period.

PARTING
WITH QUALI-
FICATION,
AND NON-
RESIDENCE
SINCE REGIS-
TRATION.

It would seem, also, that non-payment of rates before registration would not invalidate the right to vote, if the name got upon the register, as there is no personal disqualification, as in the case of receipt of alms, &c. By the 3d section of the Rep. Peop. Act, 1867, persons are "entitled to be registered" who have been rated in respect of premises occupied by them within the borough to the relief of the poor, and who have on or before July 20 in the same year paid all rates that have become payable in respect of the said premises up to the preceding January 5.

NON-PAY-
MENT OF
RATES.

Where occupiers of houses in a borough were placed on the lists of voters for the borough, and a rate had been made within the borough during the twelve months preceding the last day of July, and such rate was made upon and paid by the landlords of such occupiers, and the names of the occupiers did not appear upon the rate-book, and no objection to the registration of those occupiers was made before the revising barrister, and they subsequently voted at an election for the borough:—

Held, on a special case (*p*) stated in a petition against the return of one of the members for the borough under the Rep. Peop. Vote re-
tained if on
register.

(*p*) "Special case." By the Parl. El. Act, 1868, s. 11, sub-sec. 16, if it appears to the Court of Common Pleas that a case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly.

The special case is then heard before the Court of Common Pleas in banco, and the decision of that court is final.

Act, 1867, that s. 56 of the same act incorporated s. 98 of 6 Vict. c. 18, and that no objection could be taken on the petition to the votes of these occupiers, as their case did not fall within any one of the exceptions mentioned in s. 98 of 6 Vict. c. 18, and the register was therefore conclusive of their right to vote. *Ryder v. Hamilton* (*New Sarum case*), 4 L. R., C. P. 559.

Thus in the *Oldham case*, Blackburn, J., said—

“How can you enter upon that (*i.e.*, incapacity to vote) unless there has been an express decision by the revising barrister? My present impression is, that if a man has got on to the list without any objection being raised before the revising barrister, I cannot interfere if he is the person who is meant to be described on the register. The only inquiry I can make is this, Is the man who voted the same man who is described on the register? and if he is, I cannot go further into the matter. If there is not such a man, that is a very different thing. Is the voter to whom you object the person described on the register? If he is, I cannot go any further into the case. If you can show that he is not, then the vote will be bad.” *Oldham*, O.M. & H. 154.

It is hardly necessary to state the exception mentioned by Blackburn, J., is abolished by the Ballot Act, 1872.

A non-compliance with the provisions of the Ballot Act, 1872, and schedules 1 and 2, or a mistake at the poll, will vitiate the election, if it should appear that the result of the election was affected thereby, but not otherwise, provided the election was conducted in accordance with the principles laid down in the body of the act (Ball. Act, 1872, s. 13).

This view has been previously taken by the election judges—viz., that a trifling irregularity shall not set aside an election.

Thus—

“Supposing it happened that the votes of half-a-dozen out of two or three thousand voters are omitted to be taken, are all the other votes to be set aside, and the election declared void? It would be, in my opinion, ridiculous to say that because at one booth there was an irregularity, the whole of the rest of the borough should be put to the trouble of a new election, and all that has taken place declared null and void. I adhere to what Mr Justice Willes said at Lichfield, that a judge, to upset an election, ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside.” *Warrington*, O’M. & H. 44.

By Ballot Act, 1872, s. 2, it is enacted—

“The decision of the returning officer as to any question arising in respect of any

MISTAKES.

ballot-paper shall be final (*q*), subject to reversal on petition questioning the election or return."

By rule 36 of Ballot Act, 1872, the returning officer may reject ballot-papers for some informality, such as—

- a.* The want of official mark.
- b.* Voting for more candidates than entitled to.
- c.* Writing or mark by which votes can be identified.
- d.* Unmarked or void for uncertainty.

An agent may, with a view to a scrutiny, object to the *rejection* (rule 36); *semble*, an agent may equally object to the *counting*—as, for instance, in the case of an imperfect official mark—both points being exactly equally within the province of the returning officer to decide, and the language of the 2d section of the Ballot Act, 1872, being borne in mind.

Mistake
may be cor-
rected be-
fore voting
completed.

By rule 28 of the Ballot Act, 1872, a voter who has inadvertently dealt with his ballot-paper so that it cannot be used as a ballot-paper, may obtain another ballot-paper from the presiding officer; on that he has to deliver up the spoilt ballot-paper, which is to be immediately cancelled.

By s. 7 of Ballot Act, 1872, a person is not entitled to vote *unless his name is on the register of voters* for the time being in force, but *quære* whether it would apply to clerical errors in the poll-book, misnomer, and misdescription of residence; thus under the old system—

(*q*) As to mistakes in the counting, see "Practical Suggestions," p. 120.

Where a clerical error existed in the poll-book, the validity of the vote was not altered. *Oldham*, O'M. & H. 154. MISTAKES.
Clerical error in poll-book.

Where one Thomas B. was by mistake registered as William B., and voted under that name, Blackburn, J., held it to be no case of personation, but merely a misnomer, and the vote to be good. *Oldham*, O'M. & H. 152. Misnomer.

Where a person on the register is called by a wrong name, it does not vitiate the vote so long as the *identity* of the voter is established. *Oldham*, O'M. & H. 153.

Where a mistake occurred in the description of the locality where a voter's house was situate, Blackburn, J., held the vote to be good ; the material question being not whether the description was strictly accurate or not, but whether the man was the voter intended to be on the register. *Oldham*, O'M. & H. 153. Misdescription of residence.

Where the mistake entirely arises from the *laches* of the returning officer or his deputies, such as imperfect or erroneous marking of counterfoils or ballot-papers, over which the voter himself could have no control, *semble*, on proof of such a mistake, the vote would be counted for the candidate for whom it was given. Mistake of returning officer or deputy.

Where the same voter was entered on the register under two different names, and he voted in respect of each entry, one vote was cut off. *Oldham*, O'M. & H. 156. See also "Personation," *ante*. Where voter votes twice over one vote cut off.

Whenever, at the time of the election, a candidate is incapacitated from sitting in parliament, and due notice is given to the electors, all votes VOTES THROWN AWAY

VOTES
THROWN
AWAY.

given *subsequent* to the publication of that notice for that candidate will be thrown away and are void.

Notice of
disqualifica-
tion.

“Due notice must be given because, although the candidate may be personally incapacitated, it would not affect the votes of the persons who gave their votes for him, they being ignorant of his incapacity.”
York (County), West Riding (Southern Division). Judgments, 303.

What
amounts to
due notice.

Express notice of a disqualification must in all cases be given, and all votes recorded before such notice are good. When, therefore, the notice has not been given until after the election has begun, the question arises whether it was given to a sufficient number of electors, so that by striking off certain votes from the sitting member's poll the petitioner would be placed in a majority.

If possible, the notice should personally be served on every voter; if that be impossible, the notice should be affixed to some conspicuous place near the polling place, and should be affixed to the hustings, if the disqualification is discovered on the nomination day.

By rule 41 of the Ballot Act, 1872, it is still possible for votes to be thrown away; for if a competent tribunal decides that a voter has voted (which is apparent by the mark on the register), and it is proved that a known number of voters did vote after notice was given, the court, on being satisfied that the notice and the disqualification alleged in that notice were good, could pronounce those votes so given to be invalid. It would then be competent for the tribunal to see for whom

those voters voted, and if it appeared they had voted for the disqualified candidate after notice, their votes would be deemed to be thrown away.

In the *Galway (County) case* (1872) it was ruled, that if a candidate was guilty of a corrupt practice before an election, his status as a candidate was destroyed, and he was thereby incapacitated; and if due notice was given to the electors before polling, the votes given for him were all thrown away, and his opponent was *ipso facto* seated without a fresh election.

This decision extended the meaning of the term "guilty," which had before (see *Penrhyn*, C. & D. 55) been held to mean proved guilty by a competent tribunal of a corrupt practice, to an allegation made, but unproved on the part of opponents that a corrupt act had been committed shortly before the election, and thereby *ipso facto* destroying the status of a candidate—*i.e.*, putting him on the same level as a person statutorily disqualified; *e.g.*, by holding an office of profit within the statute of 6 Anne, c. 7, or being a contractor within the statute of 22 George 3, c. 45. See *Leominster*, C. & D. 12 (note). The inconvenience which such a decision would cause at future elections is obvious: as vague charges made on the bare chance of subsequent proof will be frequently brought, a voter will be unable to tell whether the candidates for whom he votes are really legitimately standing; also in the event of a petition being subsequently successful, the petitioner, who may have received an extremely limited degree of support, would be at once seated, though not the choice of the majority of the constituency. The

VOTES
THROWN
AWAY.

view of the law by the Irish judges is distinctly opposed to Baron Martin's in the *Norwich case* when that learned judge stated—

“And when a candidate, by an agent for whom he is responsible, commits an act of bribery, by that act the capacity of the candidate to be elected ceases, *his status is destroyed*, and no vote given to him will be of any avail. Some misapprehension occurred with regard to what I stated the other day in reference to that matter. It is not that the vote is thrown away in the sense that my brother B. seems to have supposed. I do not mean it in that sense. I meant that the moment an act of bribery is done by the agent for whom the candidate is responsible, from that moment the man is incapable of being elected, the law puts its hand upon him, and says it cares not if nine-tenths of the electors vote for him. That act of bribery incapacitates him from sitting in parliament. . . . If you suppose that because the agent of S. committed bribery at three o'clock in the afternoon of the polling day, thereupon every vote for S. after that time should be struck off, that is not correct.”—*Judgments*, 123–26.

Martin, B., unseated the respondent, but, as there was no scrutiny persevered with, did not seat the petitioner.

The view taken by election committees was likewise against that entertained by the Irish judges, with perhaps one exception—viz., 2 *Horsham*,

1 P. R. & D. 240. There, however, the notoriety of the corrupt practices was far stronger, inasmuch as evidence had been given of these before a former committee of the House of Commons, though no formal decision had been come to.

VOTES
THROWN
AWAY.

In further support of Baron Martin's view, the employment by a candidate of an agent found guilty of corrupt practices, which might be a notorious fact, has to be *proved*, by s. 44 of the Parl. El. Act, 1868, at the trial of a petition against the candidate; and no notice of such employment, however notorious, would invalidate the votes.

In case the votes given to candidates are equal, it was resolved by the House of Commons (*Journals*, July 27, 1866) that, according to the law and usage of parliament, it is the duty of the sheriff or other returning officer in *England*, in case of an equal number of votes being polled for two or more candidates at an election, to return all such candidates. England.

DOUBLE
RETURN.

In *Scotland*, by 2 & 3 Will. 4, c. 65, s. 33 (*r*), sheriffs are directed, in case the votes are equal, to make a double return. Scotland.

All proceedings consequent on the double return would be by petition to declare, by a scrutiny of the votes, that one or the other candidate has been duly elected; and now by the Parl. El. Act, 1868, s. 40, a provision is made for cases of double return where the member complained of declines to defend his return.

This section, however, is not to apply to *Ireland*, for by 35 Geo. 3, c. 29, s. 13 (*Irish*) (*r*), and 4 Geo. 4, c. 55, s. 68 (*r*), returning officers in Ireland are Ireland.

(*r*) Now repealed by Ballot Act, 1872.

DOUBLE
RETURN.*

Double re-
turn under
Ball. Act,
1872.

expressly forbidden to make a double return ; but the sheriff, or if two, he whose name stands first in the appointment, is directed to give a casting vote, whether he has a right to vote, or has voted before, or not. May's Parl. Prac., 7th ed. 644, 645.

Now by s. 2 of the Ballot Act, 1872, where an equality of votes is found to exist between any candidates, (s) and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer may give the casting vote, if a registered elector (otherwise he may not vote). Yet it may happen that a returning officer is not a registered elector for the county or borough for which he acts : the act makes no provision for such a contingency ; if it should occur, the returning officer would have to make a double return, leaving the seat to be claimed on petition.

The returning officer *may* indeed pursue that course in all cases, as he is only empowered and not required to give a casting vote.

(s) As to counting of the votes, see rules 31-37 of Ballot Act, 1872.

CHAPTER V.

PRACTICAL SUGGESTIONS AND EVIDENCE.

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THE
PETITION.

IN conclusion, it may not be without use to draw the attention of those persons who are engaged in the conduct of election petitions to some of those matters of practice which are more especially connected with the management and trial of the petition.

By s. 27 of Ballot Act, 1872, that act, so far as regards parliamentary elections, is to be construed as one with the Parl. El. Act, 1868.

By the Parl. El. Act, 1868, petitions are to be presented to the Court of Common Pleas in England or Ireland (s. 5), and in Scotland to either Division of the Inner House of the Court of Session (s. 58).

By s. 50, "From and after the next dissolution of parliament, no election or return to parliament shall be *questioned* except in accordance with the provisions of this act."

Questioned means questioned by election petition, by persons having an interest in raising the question and wishing to vindicate their own rights, and does not take away from the House of Commons their authority to decide on the eligibility of a candidate, in the event of a felon, a minor, or a woman being returned. So, in the case of O'Donovan Rossa, convicted of treason-felony under the

“Crown and Government Security Act, 1848,” who was returned for the county of Tipperary, the House of Commons agreed almost unanimously on February 10, 1870, “that he, Rossa, having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence, has become and continues incapable of being elected or returned as a member of the House.” If the House of Commons had not this power, it would make the rejection of a disqualified member contingent on a petition being presented. By the exercise of this power the House of Commons might refer to the consideration of a committee the seat of a member called in question by any member of the House; for instance, when a member accepts an old office of profit from the crown, and has not sought re-election, and no writ has been issued for a new election (see 6 Anne, c. 7, s. 26); or as in Sir S. W.’s case (see *ante*, p. 72, note *t*); or else a member already holding one office of profit receives another to hold together with the first, and does not vacate his seat. In the two latter cases it would seem that no other mode of raising the question would be left, as these cases would not fall within the provisions of the Parl. El. Act, 1868, ss. 5 and 50.

The petition may be presented by any one or more of the following persons (s. 5):—

Who pre-
sented by.

1. Some persons who voted *or* who had a right to vote at the election to which the petition relates.
2. Some person claiming to have had a right to be returned or elected at such election.

THE
PETITION.

3. Some person alleging himself to have been a candidate at such election.

Although the words of the act say *one or more*, it is prudent, provided the petition be presented by electors, to include some larger number as petitioners, in case an objection should be taken that, though they *had voted*, they had *no right to vote* at the election.

Care should also be taken that all the petitioners should, as far as possible, be voters whose votes could not be impeached.

If the petition is presented by a candidate, it means "by any person elected to serve in parliament at an election, and any person who has been nominated as or declared himself a candidate at an election" (s. 3).

Form of
Petition.

The petition is by General Rule III. to be divided into paragraphs—corrupt practices being stated in separate paragraphs; and the form of petition is set out in General Rule V. (For special forms of petitions, see App.)

Formal ob-
jection not
to be fatal.

General Rule LX. provides that "no proceeding under the Parl. El. Act, 1868, shall be defeated by any formal objection." This would apply to any technical or formal objection where the matters objected to can be rectified by the judge without prejudice to either side. *Shrewsbury*, 19 L. T., Rep. N. S. 499.

The petition
must be
presented
within
twenty-one
days.

The petition must be presented within twenty-one days after the return has been made to the clerk of the crown of election complained of (s. 6), signed by all the petitioners. Sundays are not to be included in computing the twenty-one days. *Pease v. Norwood*, 4 L. R., C. P. 235.

And the required number of days is to be computed exclusively of the first and inclusively of the last day.

THE
PETITION.

Should there be any special charge, like the alleged corrupt agreement in the *Coventry case* (see Corrupt Practices), it had better be specially alleged in the petition.

Special allegation in petition.

If general riot or general intimidation is relied on, it had also better be specially alleged in the petition, as it was doubted by Martin, B., at Cheltenham, whether general intimidation could be otherwise gone into. It was admitted, however, by Blackburn, J., at Stafford.

By s. 51, Parl. El. Act, 1868, also by s. 13, subs. 6, Corr. Prac. Mun. El. Act, 1872, where a petition complains of the conduct of a returning officer, he shall be deemed to be a respondent. Under the Ballot Act, 1872, owing to the many duties that are cast on that officer, such a case is now likely to arise frequently (a).

Special allegation against returning officer.

Before that Act it arose in the *Warrington case*, O'M. & H. 42, where there were allegations in the petition as to irregularities at the election. Martin, B., in that case ruled that in his opinion such irregularities did not void the election, and if the returning officer, by reason of the petition against him, had incurred any costs, he ought to be reimbursed.

In *Pickering v. Startin*, "Notes of the Week," L. T., Jan. 18, 1873 (which arose since the passing of the Ballot Act, 1872, and the Corr. Prac. Mun.

(a) Under what circumstances non-compliance with Ballot Act rules or mistake in forms will not invalidate election, see Ballot Act, 1872, s. 13.

THE
PETITION.

El. Act, 1872), a charge against the returning officer and his presiding officers was specially alleged in an amended petition by leave of the Court of Common Pleas. In that case the *barrister* held that the special allegation made the returning officer, under s. 13, subs. 6, a respondent; that his presiding officers had no *locus standi* to appear and defend themselves; but that the returning officer would, under certain circumstances, be liable for the acts of his deputies, and that he might in his discretion award costs either for or against such officer, following the ruling of Martin, B., in the *Warrington case*. See also Returning Officer, "Penalties;" see also *Jones v. Pickering*, "Notes of the Week," L. T., June 14, 1873.

When may
be pre-
sented
within
twenty-
eight days.

If a petition specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance of or in furtherance of corrupt practices, the petition may be presented at any time within twenty-eight days after the date of that payment (s. 6) (b).

"There is a clause in the Parl. El. Act, 1868, under which, if R. B. or one of his agents, or S. L. or one of his agents, pay in respect of the election one shilling of money at any time between this present hour and the last hour of the session of this present parliament, not only in this year, not only in the next year, but up to the last hour when it may be finally dis-

(b) This clause is framed from a sessional order of the House of Commons, 1832. See *Durham case*, B. & ARN. 213.

solved at the approach of a new election, for twenty-eight days after every individual payment a new petition can be presented, not even to parliament, but to the Court of Common Pleas, and if that individual payment be proved, the seat of the sitting member is just as effectually gone as it would be on this inquiry. There are two parties to every pecuniary transaction—there is the donor and there is the donee ; and though I am perfectly satisfied that neither of the candidates intend making any such payment, let me tell the one and the other, that if he is pressed by persons who wish to carry on a system of corruption, he is bound by no feeling of honour to contribute to their rapacity ; and let me tell him also, that if he at any time pays one shilling in consideration of this last election, he can be *again* petitioned against. If a farthing is paid in consideration of a vote at the last election to any one here, during the existence of the parliament now sitting, a new petition can be presented, and the whole thing can be again made the subject of investigation." *Galway*, per *Keogh, J.*, Judgments, 341. See O'M. & H. 305.

In the evidence of Willes, J., before the select committee on Parl. and Mun. Elections (p. 447), the learned judge stated his impression decidedly was (though to prevent doubt the sections should be amended) that under the Parl. El. Act, 1868,

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although the certificate of a judge was final as to a petition before him, *and also final of what could with due diligence have been brought forward under that petition*, the certificate was no bar to another petition being presented within twenty-eight days after a *new* act of corruption had been disclosed. But it would appear that the evidence of the learned judge should be taken with this qualification, that the new act of corruption must plainly refer to an act by the *personal* procuration of the member or with his privity; it would also seem that the words "on his account" equally bear the same interpretation, and do not refer to acts subsequent to the election done by an election agent without the member's knowledge.

"The agent that I should consider would affect the seat by his act after the election would be a person who did that act with the privity of the member. A person who merely was an agent in the sense that he had been an agent in the election would not, in my judgment, affect the seat by any corrupt act of his done after the election without the privity of the member." *Salford*, per *Martin, B.*, O'M. & H. 139.

A copy of the petition is to be sent by the prescribed officer to the returning officer of the place to which the petition relates (s. 7), and notice of the presentation of the petition and of the nature of the security, together with a copy of the petition, shall be served by the petitioner on the respondent within five days after presentation (s. 8).

Although a petition must ordinarily be presented within twenty-one days, the court or a judge at chambers, under certain circumstances, have added after that period to the allegations contained in that petition. In the case of *Pickering v. Startin*, (L. T., "Notes of the Week," Jan. 18, 1873), where the question sought to be raised by the proposed additions were not merely technical points, but seriously affected the result of the election, and where such additions could not have been inserted in the original petition, owing to want of information, such as where an inspection of votes being allowed, the petitioner discovered that certain counterfoils of voting papers were not marked as directed by the Ballot Act, 1872, s. 2.

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When petition may be amended.

By adding allegations.

The court or a judge at chambers may order clauses in a petition to be struck out. See *Stevens v. Tillett*, 6 L. R., C. P. 147.

By striking out allegations.

These would be interlocutory questions, and matters within the General Rule XLIV.

At the time of the presentation of the petition security to the amount of £1000 must be given on behalf of the petitioner, either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money, or partly in one way or partly in the other (s. 6).

RECOGNIZ-
ANCE AND
DEPOSIT.

In *Pease v. Norwood* (4 L. R., C. P. 235) it was held, "that £1000 is all that can be required, though the petition is against the returns of two or more members."

Objections to and determination of such.

"That petitioners themselves cannot be sureties, though that does not render the security invalid; but is an objection to its sufficiency under s. 8, and

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may be amended by a deposit of money under s. 9."

As to recognizances and security and objections to the same, see ss. 8 and 9, and General Rules XVIII.—XXVIII. inclusive, also General Rules XVI. and LVI., together with the Add. Gen. Rules I.—VI., and the note thereto.

By General Rule XVIII. the recognizance may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country. In the *Shrewsbury case*, 19 L. T., Rep. N. S. 499, Master Gordon held, that a recognizance acknowledged before a magistrate in London was bad.

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By General Rule VI. :—

"Evidence need not be stated in the petition, but the court or a judge may order (c) such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered."

Application for particulars can be made to any judge at chambers ; but the judges direct that the application shall be made to an election judge, if practicable (per *Byles, J.*, at chambers), and see General Rule XLIV.

It was held in *Beal v. Smith*, 4 L. R., C. P. 145 :—

(c) As to the form of order, see *Salford*, 19 L. T., Rep. N. S. 500.

“ Under the Parl. El. Act, 1868, it is enough to allege generally in the petition that ‘the respondent, by himself and other persons in his behalf, was guilty of bribery, treating, and undue influence, before, during, and after the election.’ ”

“ Upon a summons for particulars for the names, &c., of the ‘other persons,’ and of the date of such alleged act of bribery and treating, and the names of the persons bribing and of the persons bribed and treated, and the times and nature of the alleged acts of treating, and of each alleged act of undue influence, the judge at chambers ordered ‘that the petitioners shall *three* days before the day appointed for the trial leave with the master, and also give the respondent or his agent, particulars in writing of all persons alleged to have been bribed, of all persons alleged to have been treated, and of all persons alleged to have been unduly influenced:’—*Held*, that the judge had exercised a right discretion; and the court declined to interfere.”

In the *Bristol case* an order for five days’ particulars was made by Bramwell, B., with leave to add extended particulars up to three days.

In obtaining an order (*d*) for particulars, it is important to obtain an order compelling the petitioners to give the names not only of those who are bribed and those unduly influenced, but the

(*d*) The order made by Blackburn, J., in the *Hereford case*, was in the above form.

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names of the bribers and intimidators as well; and to obtain an order not only for the names of the treated but the names of the treaters, and a list of the places where the alleged treating took place.

In the *Galway County case* (1872), when the petition alleged treating, Keogh, J., refused to order the names of the persons to be given, but only the places.

In the *Bristol case*, 22 L. T., Rep. N. S. 488, an order was made for Christian names and addresses of parties bribing and bribed; and in the treating, the time when and place where such corrupt acts took place.

In the *Shrewsbury case* (not reported), Channell, B., on the trial of that petition being fixed for Dec. 5, made an order for the petitioner to deliver particulars on Nov. 30, with power to add extended particulars the next day. The same order required the petitioner to give both names and addresses, as far as known (if not the number on the register), of those guilty of corrupt practices, both bribers and bribees.

In the *Brecon case* (No. 2, not reported), where the names of bribers and treaters had not been asked for in the first particulars, Lush, J., at chambers ordered them to be added, though the application was not made until two days before the day fixed for the hearing of the petition.

In the *Gloucester case* (not reported), Blackburn, J., ordered the names and addresses of the personators and those who were alleged to have procured such personation to be given.

In many of the cases since *Beal v. Smith*, the

judges in their discretion have extended the period for giving particulars beyond three days. See *Bristol and Shrewsbury (supra)*. PARTICULARS.

In framing the particulars, care should be taken to include *every* case of corrupt practices intended to be relied on at the trial, otherwise a judge at the trial of the petition will require a summons to be taken out on affidavit asking for leave to add further names and cases, and can impose such terms with reference to costs, &c., as to him may appear fit, or may even go so far as to adjourn the hearing of the case at the cost of the parties applying to add to their particulars.

Where particulars were sought to be added *after the trial had begun*, the judge said that he would only take the application on summons, and should require the affidavit to state when the alleged act was first known. *Cheltenham*, O'M. & H. 63; 19 L. T., Rep. N. S. 820.

Care also should be taken not to include in the particulars a number of charges of corrupt practices against persons which are altogether unlikely to be substantiated. In the *Hereford case*, where 184 cases were included in the particulars and only five gone into, and none proved, Blackburn, J., said :—

“It was obvious that that could not have been done except for the purpose of baffling the objects of giving the particulars, and it is obvious it must have given the respondents a great deal of unnecessary trouble.” *Hereford*, O'M. & H. 197.

And his lordship declined to allow costs to the petitioners, who were successful. For the same reason Bramwell, B., refused to make any order for

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LAR3.

costs in the *Bristol case*, although the Court of Common Pleas had held the election void, and the court above refused to grant a rule to annul such order, on the ground that the discretion as to costs should be exercised by the judge, who having tried the petition, knew all the circumstances of the case. *Britt v. Robinson*, 5 L. R., C. P. 576.

It is safer to deliver the particulars in office hours.

Sundays should be excluded in the computation of time, although Martin, B., at Brecon, doubted whether Sunday, for the purposes of a judge's order, need be excluded.

Where a seat is claimed, and there are offers of bribes, attempts to unduly influence, &c., the names of which could not possibly be included in the six day scrutiny particulars under General Rule VII. (e), a separate particulars' list will have to be applied for in such cases.

The time for giving particulars will not be diminished on the ground that the witnesses may be tampered with, as the judge has power in such an event to adjourn the trial. *Drogheda*, 19 L. T., Rep. N. S. 528. See also *Galway County*.

Locality in
which the
petition is
to be tried.

The petition is tried within the limits of the district in which the election was held (Parl. El. Act, 1868, s. 11, subs. 11), unless the court see special reason for changing the venue, as in the *Sligo case*, where, on the grounds of intimidation, the trial was held at Carrick on Shannon, Sligo. O'M. & H. 300.

By the Parl. El. Act, 1868, s. 2:—

(e) See *Guildford*, 19 L. T., Rep. N. S. 528.

“The expression ‘the court’ shall, for the purposes of this act in its application to England, mean the Court of Common Pleas at Westminster; and in its application to Ireland, the Court of Common Pleas at Dublin (*f*); and such court shall, subject to the provisions of this act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon, as it would have if such petition were an ordinary cause within their jurisdiction.”

DEFINITION
AND JURIS-
DICTION
OF THE
COURT FOR
TRIAL OF
PETITIONS.

Having regard to the above section, inspections of documents and the usual proceedings for a discovery could be enforced either by summons at chambers or a motion in full court. In the *Stafford case*, no vouchers or detailed statement having been returned for two large sums in the election accounts contrary to 26 and 27 Vict. c. 29 (see Election Accounts), Blackburn, J., allowed the petitioners to have an inspection of all orders and vouchers in the possession of the respondents which had not been returned, and to take copies thereof. *Semble*, also, that interrogatories could be administered.

Under the same section a commission may be issued to examine a witness alleged to be ill. *Stalybridge*, 19 L. T., Rep. N. S. 703.

The evidence of a witness too ill to leave his bed was also taken at *Hereford* by the registrar; counsel for the petitioners and respondents being present and conducting the examination and cross-examination.

(*f*) As to Scotland, see s. 58, subs. 1, Parl. El. Act, 1868.

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PETITION.

Under the same section, Lush, J., adjourned the hearing of the petition of *Brecon* (2) in consequence of the absence from Christmas to April of a material witness.

Inspection
of docu-
ments be-
fore trial.

When for the purposes of a petition, an inspection of documents is necessary (Ballot Act, 1872, schedule I, rules 40 and 41), a summons should be taken out at chambers, with affidavits, stating the necessity for the inspection of the documents. (g) An appeal from the judge's decision would lie to the full court. No inspection of documents would probably be allowed until a petition had actually been presented—*i.e.*, not merely for the purpose of getting up a case. See the *Manchester* (mun. election) case, mentioned in "Notes of the Week," L. T., Nov. 23, 1872.

What docu-
ments
might be in-
spected.

The documents which might be inspected (Ballot Act, 1872, rules 40 and 41) are—

- (1.) Rejected ballot-papers.
- (2.) Counted ballot-papers.
- (3.) Counterfoils.

Care, however, must be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid (rule 41.)

If a petition alleged that the sum total of the votes had been wrongly counted by the returning officer, *semble* his decision as to the total of the poll might be reviewed on petition, and the votes re-counted before the judge, as it would not be

(g) As to municipal elections, see pt. ii. sched. I, rule 64.

necessary to discover for whom any particular voter had voted.

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PETITION.

Other documents seem open to inspection, under certain regulations (Rule 42), without an order.

There does not appear to be any authority to *order* inspection of the instrument for making the official mark on ballot-papers, though it would probably be produced on a trial.

There does not appear to be any objection (see conclusion of Rule 41) to the discovery for which candidate a vote was given immediately it has been proved the elector has voted, and that vote has been declared to be invalid ; such discovery is not only essential in a scrutiny, but would be an important link in the chain of evidence that the corrupt act in question was done by the agent of the candidate with whom it is sought to be connected, if the vote was given for that candidate.

During
trial.

The enactments with respect to the trial of petitions under the Parl. El. Act, 1868, are all contained in s. 11. In subs. 16 of s. 11, the case raised by petition can be stated by way of special case. *Ryder v. Hamilton*, 4 L. R., C. P. 559.

Petition can
be stated as
a special
case.

On the sitting of the court, proceedings are commenced by the registrar (one of whom, by General Rule XXXIX., is in attendance upon each judge) reading the petition.

After that the counsel for the petitioners opens his case, and in doing so, should take care to bring forward every case of corrupt practice on which he intends to rely.

The formal proofs as to an election having taken place are now usually admitted without calling

TRIAL OF
PETITION.Formal
proofs.

witnesses to prove them. The same mode of procedure applied at Gloucester, under the Ballot Act, 1872, at the trial of the petition before Blackburn, J.

Thus, in the *Coventry case*, on counsel for the respondents objecting to the admission of formal matters, Willes, J., said—"I shall not require the election to be proved in any of these cases; the poll-books are here, and they tell me that an election was held." *Coventry*, 20 L. T., Rep. N. S. 406.

The poll-books are in the custody of the registrar, and are produced by him if required. See also Ballot Act, 1872, Rule 43, and Add. Gen. Rule, Dec. 1868.

The judge usually hears the evidence by taking one class of cases before another is entered into; but in the *Gloucester case* (1873), Blackburn, J., decided that when a witness was under examination he should state the whole of the circumstances within his knowledge without leaving the box.

Recrimina-
tory evi-
dence.

If the seat is claimed, recriminatory evidence is admissible (*h*). (See Scrutiny.)

(*h*) Although recriminatory evidence is inadmissible where the seat is not claimed, if, however, a petition be presented, either by the defeated candidate or by electors without claiming the seat, which unseats the sitting member and causes a fresh election, and if, on such election, or any other subsequent election *during the same parliament*, the defeated candidate stands again, then corrupt practices alleged to have been practised by him at the first election may be inquired into. See Mr Justice Willes' evidence (p. 447, Select Committee on Parl. and Mun. Elections), where the learned judge said—"The law is clear that during the same parliament a person who has been as a candidate guilty of bribery at an election cannot hold his seat against

By the Parl. El. Act, 1868, s. 17—

EVIDENCE.

“On the trial of an election petition under this act, unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of the candidate in respect of such corrupt practice.”

Evidence of corrupt practice may be given before proof of agency.

This section gives discretion to the judge, who may direct counsel to change the order of proceeding, per Willes, J. *Guildford*, O'M. & H. 14.

This rule was acted on by Bramwell, B., in the *Bristol case*, 22 L. T., Rep. N. S. 732, where collective acts of bribery were alleged against one person, it was held preferable, before going into the alleged acts, to give proof of that person's agency.

The same rules with respect to evidence which govern cases at *nisi prius* are applicable to the trial of election petitions. But although the rules are the same, nevertheless isolated cases, particularly as to the admissibility of evidence of a documentary nature, have occurred during the trials of election petitions, to which it may be useful to call attention.

Rules the same as at *nisi prius*.

a petition, and that if he be returned, you may bring up against him anything he has done at any former election which could not have been brought up against him on some former petition.” But by the *Norwich case* (L. R., C. P. 147), it seems conclusively laid down that even if recriminatory evidence be entered into by the respondent, that is no bar to corrupt practices at that election being again charged against the petitioner on any future occasion. Though Bovill, C. J., in his judgment stated it was his impression that any cases investigated previously should not again be gone into, Willes, J., also concurred in that view. See *post* as to distinction between the *report* of a judge and *certificate*.

EVIDENCE.

Unstamped
promissory
note.

Thus, in the *Windsor case*, it was ruled that the act which makes stamps unnecessary in criminal proceedings applied in the trial of a petition, inasmuch as an election inquiry is of itself a proceeding of a quasi criminal character. *Windsor*, O'M. & H. 6.

Account in
possession
of respon-
dent.

In the *Bradford case*, it was ruled that petitioner might call for *any* document in the possession of the respondent, and that document was *prima facie* evidence, though of course the respondent might give any explanation of it afterwards. *Bradford*, O'M. & H. 31.

Cards sent
round be-
fore election
to voters.

In the *Gloucester case* (1873) where cards had been sent round to voters containing directions how to vote, Blackburn, J., ruled that if a fraudulent intention could be inferred from the wording on the cards, it would bring the case under s. 5 of the C. P. P. Act, 1854, whether the voter had actually been influenced thereby or not. Thus, if there was a fraudulent device of any sort to prevent a voter voting a certain way, even though unsuccessful, it would amount to a fraudulent device to interfere with the free exercise of the franchise within s. 5 of the C. P. P. Act, 1854.

E.g., if a voting card was intended to induce persons to believe that they could not vote for A, and that their vote would only be valid if they put a cross against the name of B.

Evidence
admissible
of number
of promises
made to
canvasser.

In the *Westminster case*, a canvasser was allowed to be asked how many promises he had received, although the question was objected to on the grounds that it involved hearsay upon hearsay, since it was argued (although Martin, B., held it a most remote inference) that the question might be

put, because if it turned out that the witness had been told that there was a large majority of promises for the respondent, he would, as an agent for the conduct of the election, have been less likely to consider it necessary to resort to corrupt practices in order to carry the election. *Westminster*, O'M. & H. 95. EVIDENCE.

When a witness for the petitioner was cross-examined, with a view to shake his credit, a witness was called by the respondents to contradict what he had said in cross-examination, whereupon Blackburn, J., stated that although at *nisi prius* the rule was established that a collateral issue could not be gone into, he did not think that that rule could be adhered to in election inquiries. *Norfolk* (N. Division), O'M. & H. 239. Collateral issue, where it can be inquired into.

In the *Windsor* case, where evidence was sought to be given of what occurred at a previous election, at which the respondent had not been a candidate, Willes, J., stated, "that at all times he was reluctant to go into matters connected with another election, but more particularly when the person whose return was then under inquiry had not then been a candidate." *Windsor*, 19 L. T., Rep. N. S. 615. Evidence, previous election.

It is unadvisable to employ an election agent who, although he does not come expressly within the terms of s. 44 of Parl. El. Act, 1868, may nevertheless be so closely connected with corrupt practices in the constituency as to render the candidate liable for acts committed by him prior to his having been actually retained as an agent. Evidence of prior corrupt acts of agent.

Thus, if a sitting member has employed an agent to distribute charities without check in a constituency, in the hope that it will influence the

EVIDENCE.

future election, more especially if that election is imminent, and that sitting member does not seek re-election, it would be an unadvisable and dangerous policy on the part of the fresh candidate to employ that agent at the ensuing election, as probably his acts when agent for the sitting member would be admitted as evidence against the candidate who subsequently adopted him as his agent.

See the *Stafford case*, and report of the same to the House of Commons.

Notice to produce
"all documents relating to the matter in question."

In the *Westminster case*, where notice had been given to produce "all documents, books, and papers whatsoever and in any wise relating to the matters in question in this case," Martin, B., held "that the notice covered every document which *ought* to be filed, and *ought* to be delivered to the returning officer."

It was also held that the words did not apply to all papers relating to the matter without being further particularised—that the notice was too general.

It was also held, that where one of a series of canvassing returns was used to refresh the memory of a witness, only that single return need be produced. *Westminster*, O'M. & H. 93.

Telegrams.

Telegraph clerks are bound to produce telegrams, as not being privileged communications. *Coventry*, O'M. & H. 104 ; *Bridgewater*, O'M. & H. 114. *Secus Taunton* (2).

Hearsay evidence.

With respect to statements by voters and others as to matters connected with the election, the decisions following were made :—

Conversation between

In the *Bridgewater case* M. was allowed to give in evidence the words which had passed between

a landlady and people ordering beer, but not what she had said to him about it. *Bridgewater*, O'M. & H. 114.

EVIDENCE.

tween land-
lady and
customers ;

Again, in the same case, where B. stated that when A., a publican, was drawing beer, his wife complained to him that he would not be paid, and he said, "Mr V." (the sitting member)—and the answer was objected to : Blackburn, J., said, "So far as the conversation between husband and wife goes, showing that they were giving credit to somebody, it is admissible ; but it does not prove who had been ordering it." *Bridgewater. Minutes of Evidence*, 84.

—between
landlord
and wife.

But in the *Lichfield* case, Willes, J., ruled that a wife could not be *cross-examined* as to a conversation with her husband. *Lichfield*, O'M. & H. 22. (i)

Wife cannot
be cross-
examined
as to conver-
sation with
husband.

In the *Cashel* case, where objection was taken to a witness being asked about a conversation with a voter, Fitzgerald, B., ruled that, *on a scrutiny*, a statement of a voter to the effect that he was bribed might be inquired into. *Cashel. Minutes of Evidence*, 29.

Statement
by a voter
with refer-
ence to his
being
bribed.

In the *Cashel* case, where a witness was objected to as giving evidence of a conversation between herself and Mrs T. with respect to some money with which Mrs T. wished to bribe the witness's husband, the examination was allowed to proceed on the witness stating she was the wife of a voter. *Cashel. Minutes of Evidence*, 69.

Conversa-
tion be-
tween
voter's wif
and alleged
briber ad-
missible.

Statements made by an agent are admissible, Statements made by an agent.

(i) See Evidence Amendment Act, 1853, 16 & 17 Vict. c. 83.

EVIDENCE. even though agency be not yet proved. *Lichfield*, O'M. & H. 23.

This, however, would seem to be qualified by the ruling of Blackburn, J., in the *Gloucester case*, 1873, who considered that the statement of the agent must be closely connected with some act—*i.e.*, be part of the *res-gestæ*, before evidence could be given of it.

Previous
statements
by adverse
witness.

In the *Cheltenham case*, it was ruled, where a witness was shown a mark on a paper, and denied all knowledge of it, Martin, B., said, "that all the provisions of s. 22 of the C. L. P. Act, 1854, must be strictly complied with—*i.e.*, the circumstances connected with the making the mark must be recalled to his memory, and he must in the first instance be proved to be adverse." *Cheltenham*, O'M. & H. 63.

In the *Gloucester case* (1873), Blackburn, J., ruled that when a party's own witness proved adverse, previous statements made by them could not be given in evidence to contradict their statement on oath. The distinction is obvious, as if the evidence had been allowed, the only result would be to show the party's *own* witness was not to be believed.

Banker's
pass-book of
respondent
or his agent;

In the *Tamworth case*, it was ruled that the pass-book of the respondent's agent could not be called for unless it could be proved to be material to the inquiry; and it was further ruled that the respondent's pass-book could not be called for except under similar circumstances. *Tamworth*, O'M. & H. 76.

— of respon-
dent's com-
mittee.

In the *Salford case*, where a clerk from the bankers for the respondent's committee was asked to produce the account of the respondent's com-

mittee with the cheques, Martin, B., said, "The account is not evidence if the respondent object; you must examine witnesses as to it. The account is merely a means of refreshing the memory of the clerk: he must be taken through it item by item." *Salford*, O'M & H. 136. EVIDENCE.

In the *Northallerton case*, where the respondent was asked to produce his canvass-book, Willes, J., said, "Counsel might ask for any particular entry in the canvass-book." *Northallerton*, O'M. & H. 169. Canvass-book.

In the *Westminster case*, O'M. & H. 93, canvassing-books were held not to be evidence, as nothing but documents possessed by the witness which might be used to examine him by, and the examination would then be evidence, but not the books.

There seems no doubt that a candidate is not liable for any acts committed by his agent after the election is over, unless he be himself personally privy to them—*i.e.*, no corrupt act committed after the polling has terminated by an agent for the purposes of the election can bind the candidate. The point was twice argued at length during the trial of the election petitions, once in the *Bodmin case*, O'M. & H. 118, and again in the *Salford case*, where Martin, B., said, "The agent that I would consider would affect the seat by his act after the election would be a person who did that act *with the privity of the member*. A person who merely was an agent in the sense that he had been an agent in the election, would not, in my judgment, affect the seat by any corrupt act of his done after the election without the privity of the Agency terminated at close of election.

EVIDENCE. member." *Salford*, O'M. & H. 138. *Norfolk* (N. Division), O'M. & H. 243.

See *Galway*, *supra*.

CERTIFICATE
AND REPORT
OF JUDGE.

By the Parl. El. Act, 1868, s. 11, subs. 13, the judge determines whether the petitioner or respondent was duly elected, or whether the election was void, and certifies his decision to the speaker, and such certificate is final to all intents and purposes, and in addition to the *certificate* makes a *report* in writing to the speaker (s. 11, subs. 14), at the same time (subs. 15) he may make a special report as to any matters arising in the course of the trial.

The question as to the finality of the certificate and report was thoroughly argued in the *Norwich case*, when it was decided that the certificate was final and conclusive under the words of the section, *contra*, however, as to the report, which did not estop an inquiry into charges relating to a previous election, against any person not seated by the certificate.

Report as to
bribery,
treating, or
undue in-
fluence at a
former elec-
tion.

Therefore it would seem that bribery, treating, and undue influence by a candidate or his agents at a former election, during the same Parliament, for the same place, can be inquired into on a petition against the return of that candidate on a subsequent vacancy, during the same Parliament, for the same place. See C. P. P. Act, 1854, s. 36.

"If any candidate, at any election for any county, city, or borough, shall be declared by any election committee guilty by himself or his agents of bribery, treating, or undue influence at such election, such

candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough, for the Parliament then in existence.

- (a.) The inquiry would take place in the following instances: When a candidate has been unsuccessful at a former election, and no petition has been presented against the return.
- (b.) When a petition has been presented after a former election, either by the defeated candidate or electors without claiming the seat, and on a subsequent vacancy the same candidate stands again.
- (c.) When the seat has been claimed, and re-criminatory evidence actually gone into, and a report made by the judge, but the claim to the seat during the course of inquiry has been abandoned. *Stevens v. Tillett*, VI. L. R., C. P. 137.

It is, however, highly improbable that evidence of bribery, treating, or undue influence at the former election would be admissible if these charges could have been ascertained and brought forward during the former petition. See judgments of Bovill, C. J., and Willes, J., in *Stevens v. Tillett*, 6. L. R., C. P. 147; together with the evidence of Willes, J., before the Select Committee on Parliamentary and Municipal Elections, p. 447, where that learned judge said, "The law is clear, that during the same Parliament a person who has been as a candidate guilty of bribery at an election, cannot hold his seat against a petition, and that if he be returned, you may bring up against him anything he

CERTIFICATE
AND REPORT
OF JUDGE.

has done at any former election which could not have been brought up against him on some former petition.

Semble, that bribery, treating, or undue influence, committed on former occasions by a candidate through his agents, could not subsequently be brought up against him, except under the provisions of the C.P.P. Act, 1864, s. 36, as before quoted, and the judgment of Willes, J., in the *Norwich case*. Although for personal bribery committed by a candidate he is specially disqualified from sitting for any place in any Parliament for seven years from the date of being found guilty by the Parl. El. Act, 1868, s. 43.

Personation
at a previous
election.

With respect to *personation* at a previous election, although a corrupt practice by the Ballot Act, 1872, s. 24, owing to the wording of that section, it would seem that the question of personation at a former election cannot be entered into on the trial of a petition relating to any subsequent election.

“If on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at *such election* of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in Parliament for such county or borough during the Parliament then in existence.”

The words “such election” would appear to ex-

clude evidence concerning any election *except* the one then questioned.

CERTIFICATE
AND REPORT
OF JUDGE.

As to the effect of the sections, see particularly the judgment of Willes, J., in *Stevens v. Tillett*, 6. L. R., C. P. 176.

By s. 12, the judge has power to reserve any questions of law as to the admissibility of evidence or otherwise for the consideration of the Court of Common Pleas, in which case he may postpone granting the certificate until their decision. *Youghal*, O'M. & H. 298.

Reservation
of case.

In the *Bristol case*, Bramwell, B., stated the case. The counsel on either side having permission to see it when stated, it was in the following form:—

Case.

“At the last Parliamentary election for the city of B., R. was returned. A petition against his return was duly presented, and tried before me on the 23d, and four following days, of May. I have thought it right to reserve, for the opinion of the Court of Common Pleas, a question which arises as follows.”

Form of
case.

(Here the point was stated.)

“The parties have agreed to my stating this case as a way of renewing the question ; but if necessary, I must further report to the court as the court may require.

(Signed) G. B.”

23 L. T., Rep. N. S. 189.

On the case being decided by the Court of Common Pleas, a rule of court is drawn up embodying the decision of the court in the terms in which it has been pronounced.

COSTS

By the Parl. El. Act, 1868, s. 41—

“All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the court or a judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful.

“The costs may be taxed (*j*) in the prescribed manner, but according to the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.”

In the *Bridgewater case*, Blackburn, J., said—

(*j*) See General Rule LV.

“I need hardly say that, in a case like this, where the petitioners have succeeded, the ordinary rule is that the petitioners have costs, and as there is no reason to depart from the ordinary rule, the petitioners must have costs.” *Bridgewater*, O’M. & H. 116.

COSTS.

Costs follow event.

In the *Westminster* case, Martin, B., said—

Exceptions.

“Although my impression is that costs should follow the event, I certainly should not in this case give the entire of them, for, in my judgment, this case has lasted too long. If, in our joint judgments, Mr Justice Willes, Mr Justice Blackburn, and I, consider that we ought to be governed in giving costs by the consideration as to whether there was reasonable and probable ground for the petition, I should be inclined not to give costs, for I think there was reasonable and probable ground—indeed I think there was strong ground—for it.”

Eventually it was decided that each party should pay their own costs. *Westminster*, O’M. & H. 96.

In the *Coventry* case, Willes, J., said—

“The question which remains is that of costs.

As a rule, costs ought to follow the event; and in ordinary actions they almost invariably follow it, the exceptions being rare. I did intend to deal with these cases as if they were ordinary suits between party and party. I have, however, become deeply impressed with the feeling that there is a third party, no less inte-

COSTS.

rested than those who are immediately engaged in the petition, and that I ought in each case to consider, not merely whether the petition has failed or has succeeded, but whether upon the whole I think there are grounds, not founded merely upon the truthfulness of witnesses, but founded upon the very character and history of the transaction, upon which it was for the public benefit that the petition should be presented, and upon which I think that the petitioners have had reasonable and probable cause for instituting the inquiry. I shall say no more upon that point, unless it is desired that I should do so. I think this is a case in which a petition has been most reasonably presented and prosecuted; and, therefore, I say nothing about the costs, although the petition has in the end, in my mind, altogether failed of arriving at the result of unseating the members." *Coventry*, O'M. & H. 111. See also *Norwich*, O'M. & H. 12. *Stafford*, O'M. & H. 234.

Taxation
of costs.

The 41st section of the Parl. El. Act, 1868 (31 & 32 Vict. c. 125), enacts—

Counsels'
fees,

“That the costs, charges, and expenses of and incidental to the presentation of a petition under that Act, and to the proceedings consequent thereon, are to be taxed according to the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery.”

Held, that the parties entitled to costs are entitled to an indemnity for all costs that are reasonably incurred by them in the ordinary course of a matter of such a nature, but not to any extraordinary or unusual expenses incurred in consequence of over-caution or over-anxiety as to any particular case, or from considerations of any special importance arising from the rank, position, wealth, or character of either of the parties, or any special desire on his part to insure success; and that such extraordinary costs as an attorney would not be justified in incurring without distinct and special instructions from his client, are not to be allowed.

Where the master has arrived at a decision upon a matter within his discretion, and in which no principle is involved, it lies upon those who impeach his decision to satisfy the court that he is wrong.

In the *Norwich case* (5 L. R., C. P. 185), on the taxation of the costs of a petition, the number of witnesses to be allowed, the length of the briefs and proofs, the number of counsel, and the amount of their fees and the incidental expenses of the trial, are matters for the masters' discretion, subject to the control of the court, where a proper case is shown for its interference.

The master on taxation of the petitioners' costs disallowed fees for consultation during the trial. The court, in accordance with the *Tamworth case*, directed him to review his taxation in that respect.

The master disallowed a moiety of the charges paid to the undersheriff on the trial. The court declined to interfere.

In the *Pembroke case* (5 L. R., C. P. 407), where

COSTS.

on taxation of the respondents' costs the master disallowed the expenses of the subpoenas and the fees paid to counsel; and he also substantially disallowed the costs of drawing and copying the briefs, and all the expenses of preliminary inquiries, conceiving that by analogy to the rule which precludes the allowance of costs, of preparing for trial before notice of trial given in an ordinary action, these expenses had been prematurely incurred:—the court ordered a review of the taxation.

In the three cases following, the master, on taxation, allowed on the brief a fee of 100 guineas to the leading counsel (with an additional allowance of 25 guineas in the *Penrhyn* case, on account of the great distance from London) and 75 guineas to the junior; and refreshers of 25 guineas a day to the leader, and 15 guineas a day to the junior; but he allowed no fees (except one) for "consultations." As to the *Tamworth* and *Penrhyn* cases, the master appearing to have treated them as cases of an ordinary description, the court thought there was no ground upon which they could properly interfere with or review his decision, either in point of principle or as a matter of discretion or amount, so far as regarded the fees and refreshers; but, as to the consultations, they thought the master had assimilated these cases rather too closely to the practice in ordinary actions at law, in which only one consultation is usually allowed, and that it was reasonable and proper that consultations should be held from time to time as different points of the case were developed, and that the fees should be allowed according to the usual mode of charge in ordinary

suits, and in addition to the refreshers for each day's attendance upon the inquiry.

As to the *Southampton case*, however, the majority of the court thought it stood upon a somewhat different footing ; and, looking to the nature of the inquiry and the voluminous briefs in that particular case (which were produced in court), that it would be more satisfactory that the master should reconsider the question of fees as well as consultations.

In the *Tamworth* and *Penrhyn cases*, the master disallowed all the items for "preliminary expenses," or costs of inquiry, and journeys consequent thereon, after the presentation of the petition and before the hearing, and allowed 100 guineas in the former and 150 guineas in the latter as "instructions for brief." As to these, the court saw no reason to doubt that the master had exercised a right judgment, and declined to send the matter back to him.

But in the *Southampton case*, where the costs charged as "preliminary expenses" amounted to nearly £1000, and the master had allowed only £105, looking to the affidavits, and the absence of any answer to them, to the particulars, and the number of votes objected to, the length of the briefs allowed by the master, the number of witnesses, and the other circumstances of the case :

The majority of the court (Willes, J., dissenting) thought the decision of the master should be reconsidered by him.

The result was that the rules were made absolute in all the cases as to the consultations, and in the *Southampton case* as to the counsel's fees and preliminary expenses also.

COSTS.

Rules absolute, with costs. *Tamworth, Penrhyn, Southampton*, 5 L. R., C. P. 172.

Application
for payment
of deposit.

On the trial of the Bodmin petition, Willes, J., made the following order :—

“The Parliamentary Petitions Act, 1868.

“At a court holden for the trial of the within petition at Bodmin, in the county of Cornwall, before Sir J. S. Willes, Knt., one of the justices of the Common Pleas, and one of the judges for the trial of election petitions in England, Wednesday the 24th of February 1869, the court, having heard the within petition, doth determine as follows :—

- “1. That the within-named, the member whose return is complained of by the petition, was duly elected and returned :
- “2. That no corrupt practice was proved to have been committed by or with the knowledge or consent of any candidate at such election :
- “3. That, upon the evidence before the court, it does not appear that corrupt practices have, nor that there is reason to believe that corrupt practices have, extensively prevailed at such election :
- “And the court doth order and determine that all the costs, charges, and expenses of the respondent of and incidental to the within petition be payed and defrayed by the petitioners, and that the same be taxed by the master accordingly.”

The respondents' costs having been taxed and COSTS.
allowed :

A rule was moved for to show cause why the above order should not be made a rule of court, and why the court should not direct the deposit of £250, to be paid to the respondent or his attorneys.

S. 41 of the 31 & 32 Vict. c. 125, provides that the costs "may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed."

And rule 55 provides as follows :—"Costs shall be taxed by *the* master, or at his request by any master of a superior court, upon the rule of court or judge's order by which the costs are payable ; and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid ; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way, and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court."

Montague Smith, J., referred to the first rule of the 25th of March 1869. That rule provides that "all claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by the petitioners pursuant to the 16th General Rule, made the 21st of November 1868, by the judges for the trial of election petitions in England, shall

COSTS.

be disposed of by the Court of Common Pleas or a judge."

Bovill, C. J. :—

"We cannot act upon consent in a case of this sort, inasmuch as there may be other claims upon the fund. The document in question does not seem to me to be a judge's order which can be made a rule of court; it is more in the nature of a *postea*. As, however, the second part of your rule can only be dealt with by the judge at chambers, the better course will be to go before my brother Willes for an order, and he can at the same time inquire into any interest of third persons, such as witnesses, &c., in the fund in the bank, and direct how it shall be paid out, and I will act upon his order."

Application was accordingly made to Willes, J., who made the following endorsement on counsel's brief :—

"I decline to interfere, having exhausted my powers in what I conceive to be a proper and formal way, by the *postea* embodying an order equivalent to one of *assize and nisi prius*, and which only requires to be made a rule of the Court of Common Pleas by reason of the terms of the 1 & 2 Vict. c. 110, s. 18, and which is, I conceive, as much within the power of that court to adopt by a rule as if it was made by the chief justice at *nisi prius*." See s. 29 of the 31 & 32 Vict. c. 125.

On the renewal of the application to the court COSTS.
 —*Per Curiam* :—

All we can do is to make a rule absolute to make the original order a rule of court—the costs of the application to be paid by the petitioners. *Bodmin. Weekly Notes*, L. R., C. P., Feb. 5, 1870.

The withdrawal and abatement of election petitions are regulated by the Parl. El. Act, 1868, ss. 35–38, and by General Rules XLV.—LIV. WITH-
DRAWAL AND
ABATEMENT
OF PETI-
TION (*k*).

The application for withdrawal should be accompanied by affidavits of the petitioner and defendant to the effect that it is not the result of any corrupt arrangement. (See Form, App.)

In the *Stockport case*, 19 L. T., Rep. N. S. 743, on affidavits of this description being lodged, the judge held he was bound to allow the withdrawal; and although electors had memorialised against the withdrawal, their memorial must be disregarded if they did not appear to support it.

The statutory notice of withdrawal must in all cases be given; and if a petition be withdrawn at the trial, there must be an adjournment in order that it may be given. *Hartlepool*, 19 L. T., Rep. N. S. 821. Due notice
must be
given.

It is most important that no money should be

(*k*) As to withdrawal, abatement, and substitution of respondents in municipal-election petitions, C. P. M. E. Act, 1872 ss. 17 & 18, and the General Rules thereto, Mich. Term, 1872, 45–54.

ELECTION
ACCOUNTS.

paid by the candidate except through his named election agent for money purposes—this is expressly made illegal (*l*) by 26 & 27 Vict. c. 29, s. 2. (See Penalties.)

A detailed statement (26 & 27 Vict. c. 29, s. 4) ought also to be furnished of all expenses incurred, together with a list of all those who have been employed in any paid capacity by the candidate. (See Penalties.)

Every bill and voucher should be returned to the returning officer by the time prescribed in the act; and (26 & 27 Vict. c. 29, s. 3) all bills, charges, or claims must be sent in within one month to the authorised agent, or all right to recover is barred.

A failure to comply with these conditions acts most prejudicially to the candidate on the trial of a petition.

If any money has been given by a candidate with reference to registration expenses, it had better be included in the accounts.

(*l*) The following important remarks were made by Martin, B., with respect to illegal payments, before the Select Committee on Parl. & Mun. El. 431:—"I discussed the matter this morning with Mr Justice Willes, and I attach much greater importance to and confidence in his opinion than in my own. He is of opinion, as he stated to me to-day, that he thought *that to whatever extent* the provisions of an act of Parliament were wilfully violated, which did not enact the consequences of those acts avoided the seat, a person sitting judicially could not avoid the seat."

However, the same learned judge stated subsequently that, if necessary, he would have sent a case for the judgment of the Court of Common Pleas, whether in analogy to general corruption, avoiding an election, they would hold that wilful violations of the provisions of acts of Parliament which, of themselves, did not enact that the seat should be lost, nevertheless was such illegal conduct as, like general corruption, would avoid the seat.

Great care should be taken by the candidate not to send a sum of money to his agent exceeding the sum named in the returned accounts. Should it happen that he does so, the balance ought to be duly accounted for by such agent.

ELECTION
ACCOUNTS

CHAPTER VI.

PERSONS DISQUALIFIED TO BE ELECTED OR TO SIT
AND VOTE IN PARLIAMENT.

ALIENS—unless naturalised under 33 & 34 Vict.
c. 14. ‘May’s Parl. Prac.’ 7th ed. 31.

BANKRUPTS: By 52 Geo. 3, c. 144, s. 1, and the Bankruptcy Act, 1869, s. 122, if a member of the House of Commons is adjudged bankrupt, he shall be for one year, from the date of the order of adjudication, incapable of sitting and voting, unless within that time the order is annulled or the creditors are fully paid or satisfied.

At the expiration of that time the Court is required to certify the bankruptcy to the Speaker, when the seat of the member is vacant, and a new writ is issued.

It should be noticed that the words of the section do not disqualify a bankrupt from standing, although by the Irish Act, 19 & 20 Geo. 3, c. 25, s. 9, it is enacted that *any person*, against whom a commission of bankruptcy shall issue, shall *be rendered incapable of being elected, &c.*, and it would seem that the effect of that section, coupled with the Act of Union, 41 Geo. 3, c. 52, would prevent a person disqualified under the *Irish Act* from being elected or sitting for an *Irish* constituency. But (notwithstanding an opposite opinion is entertained in ‘Rogers on Elections,’ 10th

BANKRUPTCY—*continued.*

ed. p. 218 note), there does not seem anything in the Act of Union, 41 Geo. 3, c. 52, to disqualify a bankrupt being elected for an English constituency.

It should also be noticed that the wording of the section of 52 Geo. 3, c. 144, s. 1, and the Bankruptcy Act, 1869, s. 122, differ as follows: In the former the words are, 'The creditors . . . shall be *paid or satisfied to the full amount* of their debts,' in the latter the words are, 'the creditors shall be *fully paid or satisfied.*' The wording of the latter would seem to suggest that if the creditors were 'satisfied,' which they might be by accepting unanimously a composition as payment in full, a member might still keep his seat at the expiration of the year.

In support of that view it may be remembered that Lord Hatherley, C. (in *Ld. De M.'s case*) moved that Lord —— should take his seat, the creditors being satisfied—though nothing appeared to shew that they had been paid in full; see 34 & 35 Vict. c. 50, s. 4. (The Bankruptcy Disqualification Act, 1871.) See also 'May's Parl. Prac.' 7th ed. p. 35.

It appears that a liquidation by arrangement is distinct from an adjudication of bankruptcy—7 Ch. App. Cas. 519.

It does not appear there is any incapacity from a Scotch sequestration.

A peer incapacitated from sitting in the House of Lords under 34 & 35 Vict. c. 50,

BANKRUPTCY—*continued*.

cannot be a member of the House of Commons.

CLERGYMEN : Any person ordained priest or deacon, also any minister of the church of Scotland. But now by 33 & 34 Vict. c. 91 (the Clerical Disabilities Act, 1870) any minister of the church of England may execute a deed of relinquishment which frees him from his disabilities. See Penalties.
Also Roman Catholic Clergy.

CONTRACTORS (*a.*). See Penalties.

CORRUPT PRACTICES — persons guilty of. See Penalties.

FELONS. See Case of O'Donovan Rossa (Practical Suggestions).

GOVERNORS OF COLONIES : By 10 Geo. 4, c. 62, s. 1, governors appointed to posts under the East India Company were incapacitated from sitting and voting in the House of Commons, and were (sect. 2) subject to a penalty of

(*a.*) In the event of a person being a member of a firm accepting contracts from a government department, desiring to be a candidate, he might probably be protected from disqualification and from penalties by arranging that his partners, with the consent of government, should enter into each separate government contract alone, and receive all profits arising therefrom.

In order to carry out this, a new deed of partnership should be executed, by which the candidate should derive no profit and incur no loss from those contracts, and the receipts should be paid into a separate account, and the partnership should allow a reasonable sum for the use of the plant, &c.

This arrangement would in all probability be sufficient; at the same time a member elected under those circumstances might be subjected to great anxiety by any person who might choose to sue him for penalties.

GOVERNORS OF COLONIES—*continued*.

500*l.* if they did so. As, however, the East India Company has now ceased to exist (21 & 22 Vict. c. 106), *semble*, governors appointed to places contained in that Act would now come under the provisions of 6 Anne, c. 7, ss. 25, 29.

IMBECILES.

INFANTS.

JUDICIAL OFFICERS.

MEMBERS—already returned for one place are ineligible for any other until the seat is vacated—therefore a member often accepts the Chiltern Hundreds (which cannot be accepted during the recess, 21 & 22 Vict. c. 110, s. 4) for that reason. Persons are, however, frequently returned for two places during a general election, and then afterwards elect which constituency they will represent. A member who has given the prescribed notice under the Parl. El. Act, 1868, s. 39, that he does not intend to oppose a petition, shall not sit or vote in the House of Commons until the House of Commons has been informed of the report on the petition.

MISDEMEANANTS—if fraudulent.

OFFICES: (1.) Persons having new offices or places of profit *under* (b.) the crown

(b.) Persons accepting offices or places of profit *from* the crown created *before* A.D. 1705 must vacate their seats, but are capable of being re-elected. By the Rep. Peop. Act, 1867, s. 52, members holding offices or places of profit from

OFFICES—*continued.*

created *since* (c.) October 25th, A.D. 1705 (d.).

(2.) As to the holders of certain offices or places of profit expressly disqualified, see 'Rogers on Elections.'

(3.) Persons having offices or places of profit by the nomination of the Lord Lieutenant of Ireland created since 33 Geo. 3, c. 41 (Irish).

PEERS—except Irish peers not elected of the twenty-eight representative peers.

PENSIONERS from the crown during pleasure or for years. But see 32 & 33 Vict. c. 15, by which persons with Civil Service pensions or superannuation allowances are allowed to sit in Parliament.

RECORDERS for their own boroughs.

RETURNING OFFICERS for their own boroughs.

SHERIFFS for their own shires.

the crown, as in Schedule II. to that act described, are not required to vacate their seats by the subsequent acceptance from the crown of any other office or offices in lieu of and in immediate succession the one to the other.

For the exceptions by special acts in favour of persons holding certain offices or places of profit, see 'Rogers on Elections,' 11th ed. 231, 232.

But persons accepting offices or places of profit created *before* A.D. 1705 *under* the crown, as distinguished *from* the crown, do not vacate their seats.

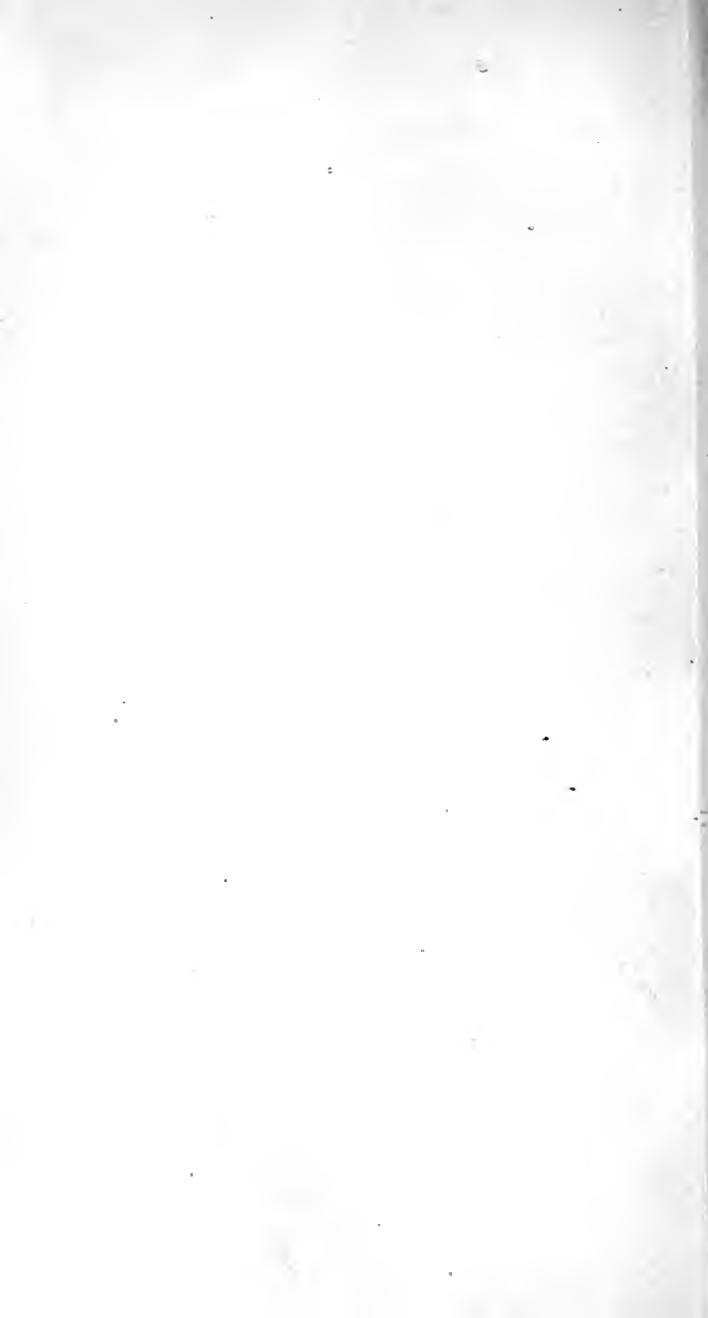
(c.) For offices and places of profit expressly exempted from the operation of the act disqualifying their holders from sitting in parliament, see 'Rogers on Elections,' 11th ed. 231, 232.

(d.) The Master of the Rolls in England may sit in parliament. 'May's Parl. Prac.' 7th ed. 33.

SCOTCH SHERIFF SUBSTITUTES : Sheriff clerks and deputy sheriff clerks for the shires for which they are appointed.

SCOTCH TOWN CLERKS and deputy town clerks for the places or districts for which they are appointed.

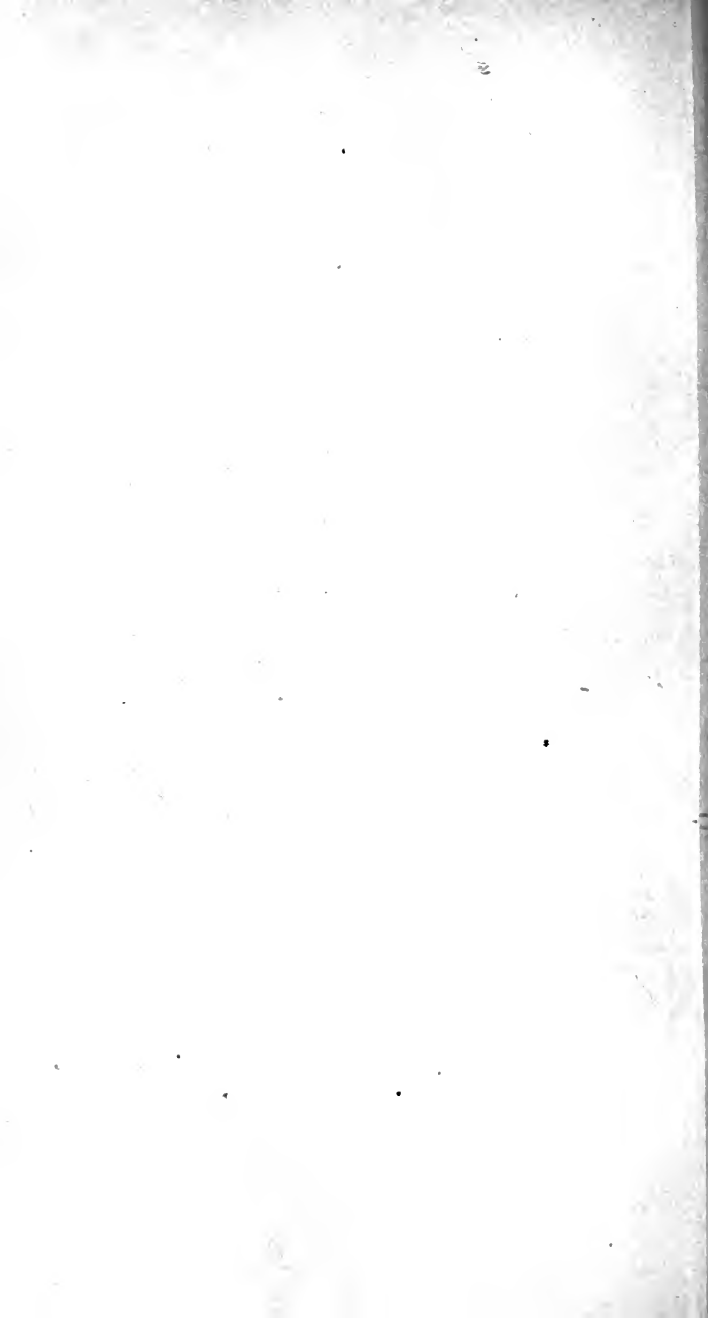
WOMEN.



APPENDIX.



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APPENDIX.

A.

Scrutiny Lists (Form of).

In the Common Pleas.

Parliamentary Elections Act, 1868.

Borough of

In the matter of the Petition by A. B. petitioner,
and
C. D., respondent.

The following is the list of voters who voted for C. D. at the last election for the borough of and whose votes are intended to be objected to by and on behalf of the petitioner, with the several heads of objection distinguishable against the names of such voters.

CLASS 1.

Register Number.	Name of the Voter.	Grounds of Objection.
		The votes of each of these voters will be objected to on the ground that before, during or after the said last election for the borough of such voter was guilty of bribery within the meaning of the statute 17 & 18 Vict. c. 102, s. 2.

CLASS 2.

Register Number.	Name of the Voter.	Grounds of Objection.
		<p>The votes of each of these voters will be objected to on the ground that he did before, during and after the last election for the said borough of by himself or other persons on his behalf, receive, agree or contract for money or some other valuable consideration or place or employment, for voting or agreeing to vote for the said respondent at the said election, or for refraining, or agreeing to refrain, or having refrained from voting for the said petitioner at the said election.</p>

CLASS 3.

Register Number.	Name of the Voter.	Grounds of Objection.
		<p>The vote of each of these voters will be objected to on the ground that he was guilty of corrupt treating at the said election in order to induce voters to vote at the said election, or for having voted thereat for the said respondent, or for refraining, or agreeing to refrain, or having refrained from voting for the said petitioner.</p>

CLASS 4.

Register Number.	Name of the Voter.	Grounds of Objection.
		<p>The votes of each of these voters will be objected to on the ground that he did corruptly before, during or after the said election accept meat, drink, &c., given or provided by the said respondent, by himself, or by or with other persons, or on his behalf, or to the giving and providing of which the said respondent, or other persons on his behalf, did wholly or in part pay, and which said meat, drink, &c., were given on account of the said voters voting, or agreeing to vote, or having voted for the said respondent, or for refraining or agreeing to refrain, or having refrained from voting for the said petitioner.</p>

CLASS 5.

Register Number.	Name of the Voter.	Grounds of Objection.
		<p>The votes of each of these voters will be objected to, on the ground that he intimidated and unduly influenced, compelled or induced certain voters to vote at the said election for the said respondent, or to refrain from voting for the said petitioner.</p>

CLASS 6.

Register Number.	Name of the Voter.	Grounds of Objection.
		The votes of each of these voters will be objected to, on the ground that he was unduly influenced, intimidated, compelled or induced to vote at the said last election for the said respondent, or to refrain from voting for the said petitioner.

CLASS 7.

Register Number.	Name of the Voter.	Grounds of Objection.
		The votes purporting to be the votes of each of these voters will be objected to, upon the ground that such voters did not actually and personally vote at the said election, but were dead, absent or otherwise incapable of voting at the time of such election, and that such voters were, each of them, illegally personated by some other person who falsely assumed to vote, and did vote, in the name of such voter for the respondent.

CLASS 8.

Register Number.	Name of the Voter.	Grounds of Objection.
		The votes of each of these voters will be objected to on the ground that he aided, abetted, counselled, or procured at the said last election the commission of the offence of personation.

CLASS 9.

Register Number.	Name of the Voter.	Grounds of Objection.
	:	The votes of each of these voters will be objected to on the ground that at the time of the last election such voter was an alien (or an infant under twenty-one, or a woman, as the case may be), and therefore incapable of voting at the said election.

CLASS 10.

Register Number.	Name of the Voter.	Grounds of Objection.
		The votes of each of these voters will be objected to on the ground that within six months before and during the last election such voter was retained, hired and employed for reward for the purposes of the election by the petitioner, a candidate at such election, as agent, canvasser, clerk, messenger, or in other like employment, contrary to the provisions of 30 & 31 Vict. c. 102, s. 11.*

CLASS 11.

Register Number.	Name of the Voter.	Grounds of Objection.
		The votes of each of these voters will be objected to on the ground that he was disqualified at the time of the said election for voting, by reason of his having received parochial relief, or other alms, within twelve months of the date of the election.

* Scotch and Irish, 31 & 32 Vict. cc. 48, 49.

APPENDIX.

CLASS 12.*

Register Number.	Name of the Voter.	Grounds of Objection.
		The following ballot-papers will be objected to on the ground that they are not marked with the official mark, and ought not to have been counted.

CLASS 13.*

Register Number.	Name of the Voter.	Grounds of Objection.
		The following ballot-papers will be objected to on the ground that they are unmarked or void from uncertainty.

CLASS 14.*

Register Number.	Name of the Voter.	Grounds of Objection.
		The following ballot-papers will be objected to on the grounds that they are so marked that the votes might be identified and ought not to have been counted.

CLASS 15.

Register Number.	Name of the Voter.	Ground of Addition.
		The votes of each of these voters will be sought to be added on the ground that such voter tendered his vote at the said last election and had a valid right and title to vote thereat.

* In these three classes (12, 13, 14) the numbers of the ballot-papers objected to after inspection ought to be furnished.

B.

- (1.) SPECIAL FORMS OF PETITION (a).
- (2.) NECESSARY AFFIDAVIT FOR WITHDRAWAL OF PETITION.

Special Forms of Petition.

In the Common Pleas.

“The Parliamentary Elections Act, 1868.”

Election for the county of holden on the and days
of in the year of our Lord .

The petition of A.B., of in the county of .

1. Your petitioner is a person who voted at the above election.
2. Your petitioner states that the said election was holden on the
days of , in the year of our Lord , when C. D., E. F.
and G. H. and I. K., esquires, were candidates; and the returning
officer has returned the said E. F. and C. D. as being duly elected.
3. Your petitioner says that the said E. F. and C. D. were by them-
selves, by their agents or agent and by other persons on their behalf,
and each of them or one of them was by himself, by his agents or agent
and by other persons on his behalf, guilty of bribery before, during and
after the said election, whereby they were and are and each of them or
one of them was and is incapacitated to serve in the present parliament
for the said county, and the said election and return of the said E. F.
and C. D. and each of them or one of them were and are wholly null
and void.
4. Your petitioner further says that the said E. F. and C. D. were by
themselves, by their agents or agent and by other persons on their
behalf, and each of them or one of them was by himself, by his agent
or agents and by other persons on his behalf, guilty of treating before,
during and after the said election, whereby they were and are and each
of them or one of them was and is incapacitated to serve in the pre-
sent parliament for the said county, and the said election and return of
the said E. F. and C. D. and each of them or one of them were and are
wholly null and void.
5. Your petitioner further says that the said E. F. and C. D. were by
themselves, by their agents or agent and by other persons on their
behalf, and each of them or one of them was by himself, by his agents
or agent and by other persons on his behalf, guilty of undue influence
before, during and after the said election, whereby they were and are
and each of them or one of them was and is incapacitated to serve in

(a) For Common Form see General Rule V.

the present parliament for the said county, and the said election and return of the said E. F. and C. D. and each of them or one of them were and are wholly null and void.

6. Your petitioner also says that the said E. F. and C. D. and each of them or one of them personally engaged before, during or at the election to which this petition relates as canvassers or agents, canvasser or agent, persons or a person reported guilty of corrupt practices or a corrupt practice by the report of commissioners appointed in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-seven, that is to say, reported so guilty by the report of the commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the borough of _____ and which report is mentioned and referred to in "The Representation of the People Act, 1867," knowing that the persons or person so engaged had been so reported guilty of corrupt practices or a corrupt practice within seven years previous to such engagement, whereby the said election and return of the said E. F. and C. D. and each of them or one of them were and are wholly null and void.

Wherefore your petitioner prays that it may be determined that both of them the said E. F. and C. D. were not duly elected or duly returned, and that the said election and return so far as respects both of them the said E. F. and C. D. were and are wholly null and void; or that failing that it may be determined that one of them the said E. F. and C. D. was not duly elected or duly returned, and that the said election and return so far as respects one of them were and are null and void.

In the Common Pleas.

"The Parliamentary Elections Act, 1868."

Election for the borough of _____, holden on the _____ and _____ days of _____, in the year of our Lord _____.

The petition of A. B. of _____, in the county of _____, whose name is subscribed.

1. Your petitioner was a candidate at the above election.
2. And your petitioner states that the said election was holden on the _____ and _____ days of _____, in the year of our Lord _____, when C. D. and your petitioner A. B. were candidates, and the returning officer has returned C. D. as being duly elected.
3. And your petitioner further says, that the said C. D. was by himself and other persons on his behalf guilty of bribery, treating and

undue influence before, during and after the said election, whereby he was and is incapacitated from serving in parliament for the said borough of , and the said election and return of the said C. D. were and are wholly null and void.

4. And your petitioner further says, that many persons voted at the said election and were reckoned upon the poll for the said C. D. who were guilty of bribery, treating or undue influence, and who were bribed, treated or unduly influenced to vote thereat for him, and that the said votes of all such persons were null and void and ought now to be struck off the poll.

5. And your petitioner further says, that many persons who were registered as voters for the borough of were admitted to vote and did vote in favour of the said C. D. who were and had been disqualified by legal incapacity to vote and were prohibited by law from voting by virtue of divers statutes in force at the time of the said election, and such votes ought now to be struck off the poll.

6. And your petitioner further says, that many persons who were disqualified to vote at such election by reason of their holding or having held disqualifying employments, or having been retained, hired or employed for the purposes of the election for reward by and on behalf of the said C. D. at the said election as agents, canvassers, clerks, messengers or other like employments, were, nevertheless, admitted to vote and did vote for the said C. D., and that such votes ought now to be struck off the poll.

7. And your petitioner further says, that many persons voted at the said election for the said C. D. who had become disqualified to vote, and were incapable of voting at the said election on the ground of their having received parochial or other alms or relief, and that such votes ought now to be struck off the poll.

8. And your petitioner further says, that certain persons whose names appear on the said register voted twice at the said election in favour of the said C. D., and that the votes of such persons should now be struck off the poll.

9. And your petitioner further says, that persons personated and voted as and for certain electors whose names appear on the register of the said borough, but who did not themselves vote, and that the votes so recorded ought now to be struck off the poll.

10. And your petitioner further says, that the said C. D. obtained an apparent and colourable majority over your petitioner the said A. B., whereas in truth and in fact your petitioner the said A. B. had a majority of votes of the electors of the said borough who voted at the said election, and who were at the time thereof duly qualified by law to vote, and was duly elected as a member to serve in parliament for the said borough, and ought to have been returned as such member.

11. And your petitioner further says, that the said C. D. personally engaged at the said election as a canvasser or agent for the manage-

ment and purposes of the election a certain person, that is to say, one E. F., knowing that such person had within seven years previous to such engagement and such election been reported guilty of a corrupt practice, that is to say bribery, by a committee of the house of commons, whereby the election and return of the said C. D. were and are null and void.

Wherefore your petitioner prays that it may be determined that the said C. D. was not duly elected or returned, and that his election and return were and are wholly null and void, and that your petitioner the said A. B. was duly elected, and ought to have been returned.

A. B.

In the Common Pleas.

“The Parliamentary Elections Act, 1868.”

Election for the borough of _____, in the county of _____, holden on the _____ day of _____, in the year of our Lord _____

The petition of A. B., of _____, in the county of _____, and of _____, in the county of _____, and C. D., of _____, in the city of _____, whose names are subscribed.

1. Your petitioners were respectively candidates at the said election and claim to have a right to have been returned thereat.

2. And your petitioners state, that the election was holden on the _____ day of _____, in the year of our Lord _____, when E. F., G. H., your petitioner A. B., and your petitioner C. D., were candidates, and the returning officer has returned the said E. F. and G. H. as being duly elected.

3. And your petitioners say, that the said E. F. and G. H. were by themselves and each of them, and other persons on their and each of their behalf, guilty of bribery, treating and undue influence before, during and after the said election, whereby they and each of them were and are incapacitated to serve in the present parliament for the said borough of _____, and the said election and return of the said E. F. and G. H. were and are null and void.

4. That many persons voted at the said election and were reckoned upon the poll of the said E. F. and G. H. who were bribed, treated and unduly influenced to vote thereat for them the said E. F. and G. H., that the votes of all such persons were null and void and ought now to be struck off the poll.

5. That many persons voted at the said election and were reckoned upon the poll of the said E. F. who were bribed, treated and unduly influenced to vote thereat for the said E. F., that the votes of all such persons were null and void and ought now to be struck off the poll of the said E. F.

6. That many persons voted at the said election and were reckoned upon the poll of the said G. H. who were bribed, treated and unduly influenced to vote thereat for the said G. H., that the votes of all such persons were null and void and ought now to be struck off the poll of the said G. H.

7. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. and G. H. who were before and at and after the said election guilty of bribery, treating and undue influence, and that all such persons were thereby disqualified from voting and their votes ought now to be struck off the poll.

8. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. who were before and at and after the said election guilty of bribery, treating and undue influence, and that all such persons were thereby disqualified from voting, and their votes ought now to be struck off the poll of the said E. F.

9. That divers persons voted at the said election and were reckoned upon the poll of the said G. H. who were before and at and after the said election guilty of bribery, treating and undue influence, and that all such persons were thereby disqualified from voting, and their votes ought now to be struck off the poll of the said G. H.

10. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. and G. H. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their vote ought now to be struck off the poll.

11. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their votes ought now to be struck off the poll of the said E. F.

12. That divers persons voted at the said election and were reckoned upon the poll of the said G. H. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their votes ought now to be struck off the poll of the said G. H.

13. That the majority of votes declared by the returning officer in favour of the said E. F. and G. H. and of each of them respectively, was only an apparent and colourable majority, inasmuch as the votes of divers persons were accepted and received on the said poll in favour of the said E. F. and G. H., and in favour of the said E. F. separately from the said G. H., and in favour of the said G. H. separately from the said E. F., who were not legally entitled and had no right to vote at the said election, and that the real majority of good and legal votes polled

at the said election was in favour of the said A. B. and C. D. and each of them over the said E. F. and G. H. and over each of them, and that the said A. B. and C. D. were duly elected members to serve in parliament and ought to be returned as such.

Wherefore your petitioners pray that it may be determined that the said E. F. and G. H. were not nor was either of them duly elected or returned, and that the election and return of the said E. F. and G. H. and each of them was and were null and void, and that the said A. B. and C. D. and each of them were respectively duly elected and ought to have been returned to serve as members for the said borough of _____ in this present parliament.

And your petitioners will ever pray, &c.

A. B.
C. D.

In the Common Pleas.

“The Municipal Elections Act, 1872.”

Election holden on the 1st day of November, 18 . The petition of _____, of _____, in the county of _____, whose name is subscribed. 1. Your petitioner, _____, was, at the above election, a candidate to represent the ward called _____, being one of the wards of the borough of _____, in the Council of the said borough of _____.—2. Your petitioner says that the election in the said ward for a Councillor was holden on the 1st day of November, 18 , when your petitioner and _____, in the said borough of _____, were candidates for election to the office of Councillor then vacant for the said _____, and the returning officer returned _____ as being duly elected a Councillor to supply such vacancy, who accepted and took upon himself the office.—3. Your petitioner says that the said _____ was, by himself, and others on his behalf, guilty of treating, corrupt practices, and undue influence, before, during, and after the said election, whereby he was and is incapacitated to serve as a Councillor for the said borough, and that the said election and the return of the said _____ was null and void.—4. And your petitioner says many persons voted at the said election, and were reckoned as voting for and upon the poll of the said _____, who were bribed, treated, and unduly influenced to vote thereat for him, the said _____, and that the votes of all such persons were null and void, and ought now to be struck off the poll, and that the said election and return of the said _____ is null and void.—5. And your petitioner says that at the above election certain persons who voted for the said _____ did knowingly personate and falsely assume to vote in the name of certain other persons whose names appear upon the burgess-roll of the said borough of _____, as persons entitled to vote at the said election for _____, and such votes ought not to be reckoned for the said _____, and ought to be disal-

lowed and struck off the poll; and that the said election and return of the said is null and void.—6. And your petitioner says that at the above election certain persons who voted for the said were procured by the said and others on his behalf, to personate and falsely assume to vote in the name of certain other persons whose names appear in the said burgess-roll as persons entitled to vote for the said , and that such votes ought not to be reckoned for the said , and ought to be disallowed and struck off the poll, and that the election and return of the said is null and void.—7. And your petitioner says that at the above election certain persons were admitted to vote, and did vote, for the said , who were not entitled by law to vote at the said election, and who were disabled by law from voting at the same, and such votes ought not to be reckoned for the said , and ought to be disallowed and struck off the poll, and the said election of the said is null and void.—8. And your petitioner says that at the above election the said employed certain burgesses to act for him in procuring his election as such Town Councillor, and for reward the said burgesses voted for the said at the said election, and such votes ought not to be reckoned for the said , and ought to be disallowed and struck off the poll, and that the said election and return of the said is null and void.—9. And your petitioner says that certain votes given at the above election for the said were given upon ballot papers not duly bearing the official mark, and were erroneously received as being good and valid votes, and counted for the said ; and that all such votes were null and void, and ought not to be reckoned for the said , and ought to be disallowed and struck off from the votes polled for the said , and that the election and return of the said is null and void.—10. And your petitioner says that the city of is divided into two wards—to wit, A ward and B ward, and that divers voters voted first of all in A ward, and subsequently to that in B ward, and that the votes so given by the said voters in B ward were wholly null and void, and ought not to have been counted.—11. And your petitioner says, that the majority of the votes declared by the returning officer at the said election to be in favour of the said , and over your petitioner, was only an apparent and colourable majority, inasmuch as divers persons who voted at the election in favour of the said were not legally entitled and had no right to vote at the said election; and that the real majority of good votes polled at the said election was in favour of your petitioner over the said , and your petitioner was duly elected a member to serve as a Councillor of the said borough for the said ward, and ought to be returned as such. Wherefore your petitioner prays that it may be determined that the said election and return of the said was null and void, and that he was not duly elected or returned, and your petitioner was duly elected, and ought to have been returned.

Necessary Affidavit for withdrawal of Petition.

In the Common Pleas.

“Parliamentary Elections Act, 1868.”

Election Petition for

_____ Petitioner.

_____ Respondent.

Affidavit of

I _____ of _____, in the county of _____, the above-named respondent, make oath and say as follows:—

That to the best of my knowledge, information and belief the withdrawal of, or application to withdraw, this petition, is not the result of any corrupt arrangement, or in consideration of the withdrawal of, or application to withdraw, any other petition.

C.

6 ANNE. C. 7.

25. And be it further enacted by the authority aforesaid, that no person who shall have in his own name, or in the name of any person or persons in trust for him, or for his benefit, at any new office or place of profit whatsoever under the Crown, which at any time since the 25th day of October, in the year of our Lord 1705, have been created or erected, or hereafter shall be created or erected, nor any person who shall be a commissioner or sub-commissioner of prizes, secretary, or receiver of the prizes, nor any comptroller of the accounts of the army, nor any commissioner of transports, nor any commissioner of the sick and wounded, nor any agent for any regiment, nor any commissioner for any wine licences, nor any governor or deputy governor of any of the plantations, nor any commissioners of the navy employed in any of the out-ports, nor any person having any pension from the Crown during pleasure, shall be capable of being elected, or of sitting or voting as a member of the House of Commons in any Parliament which shall be hereafter summoned and holden.

Persons in office, &c. made incapable of being elected members of the House of Commons.

Extended to pensioners for years certain by 1 G. I. s. 2, c. 56, s. 1.

26. Provided always, that if any person being chosen a member of the House of Commons shall accept of any office of profit from the Crown during such time as he shall continue a member, his election shall be, and is hereby declared to be, void, and a new writ shall issue for a new election as if such person so accepting was naturally dead. Provided, nevertheless, that such person shall be capable of being again elected, as if his place had not become void as aforesaid.

Accepting office of profit while a member, election void, but may be again elected.

27. Provided also, and be it enacted, that in order to prevent for the future too great a number of commissioners to be appointed or constituted for executing of any office, that no greater number of commissioners shall be made or constituted for the execution of any office than have been employed in the execution of such respective office at some time before the first day of this present parliament.

No office to be executed by too many commissioners.

28. Provided also, that nothing herein contained shall extend or be construed to extend to any member of the House of Commons, being an officer in Her Majesty's navy or army, who shall receive any new or other commission in the navy or army respectively.

Not to extend to officers in the navy or army.

Persons disabled if returned as members, such election and return void.

Penalty on sitting 500*l*.

29. And be it further enacted, that if any person hereby disabled or declared to be incapable to sit or vote in any Parliament hereafter to be holden, shall nevertheless be returned as a member to serve for any county, stewartry, city, town, or cinque port, in any such Parliament, such election and return are hereby enacted and declared to be void to all intents and purposes whatsoever. And if any person disabled, or declared incapable by this Act to be elected, shall, after the dissolution or determination of this present Parliament, presume to sit or vote as a member of the House of Commons in any Parliament to be hereafter summoned, such person so sitting or voting shall forfeit the sum of five hundred pounds, to be recovered by such person shall sue for the same in England, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed, and only one in parlance.

30. And be it further enacted and declared, that every person disabled to be elected, or sit or vote in the House of Commons of any Parliament of England, shall be disabled to be elected, or sit or vote in the House of Commons of any Parliament of Great Britain.

A.D. 1707.

D.

CORRUPT PRACTICES PREVENTION ACT,
1854.

17 & 18 VICT. c. 102.

An Act to consolidate and amend the Laws relating to bribery, treating, and undue influence at elections of Members of Parliament. [10th August 1854.]

WHEREAS the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: And whereas it is expedient to consolidate and amend such laws, and to make further provision for securing the freedom of such elections: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The several Acts of Parliament mentioned in the Schedule A. hereto annexed shall be repealed to the extent specified concerning the same Acts respectively in the third column of the said schedule. Repeal of Acts in the schedule.

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly: Bribery defined.

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election:

2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on ac-

count of any voter having voted or refrained from voting at any election :

3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election :
4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election :

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the same, together with full costs of suit : Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election :
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election :

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of

ten pounds to any person who shall sue for the same, together with full costs of suit. Penalty.

4. Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect. Treating defined.
Penalty.

5. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter or shall thereby compel, induce, or prevail upon any voter either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit. Undue influence defined.
Penalty.

6. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge Names of offenders to be struck out of register and inserted in separate list.

the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list to be entitled "The List of Persons disqualified for Bribery, Treating, "or undue Influence," which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published.

No cockades,
&c. to be
given at
elections.

Penalty.

7. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music or flags or banners, shall be deemed illegal payments within this Act.

Voters not
to serve as
special
constables
during
elections.

8. No person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding.

Penalties
how to be
recovered.

9. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of Her Majesty's Superior Courts at Westminster, if the offence be committed in England or Wales; and in any of Her Majesty's Superior Courts in Dublin, if the offence be committed in Ireland; and in or before the Court of Session, if the offence be committed in Scotland; and not otherwise.

Costs and
expenses of
prosecu-
tions.

10. It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions.

Section 11 relating to the returning officer giving notice of election repealed by Ballot Act, 1872.

12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

In cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor.

13. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following: that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs.

14. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay (a).

Limitation of actions.

Sections 15 to 22 repealed by 26 & 27 Vict. c. 29.

23. And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: Be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of

Refreshments to voters on the days of nomination or polling declared illegal.

(a) By 26 & 27 Vict. c. 29, s. 5, the provisions of this section are extended to a misdemeanor or to any other offence under the C. P. P. Acts not punishable by a penalty or forfeiture as well as to proceedings for any offence punishable by a penalty or forfeiture.

polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit.

Sections **24** to **32** repealed by 27 & 28 Vict. c. 29.

Payments
before pass-
ing of Act.

33. If any candidate at any election, or any member hereafter returned to serve in Parliament, shall before the passing of this Act have paid any money for or in respect of any election hereafter to be held, or any expenses thereof, such person shall, to the best of his ability, deliver a full, true, and particular account of such payment or payments to the election auditor.

Section **34** repealed by 26 & 27 Vict. c. 29.

In actions
for penalties,
parties, &c.
to be compe-
tent wit-
nesses.

35. On the trial of any action for recovery of any pecuniary penalty under this Act the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives are competent and compellable to give evidence in actions and suits under the Act of the fourteenth and fifteenth Victoria, chapter ninety-nine, and "The Evidence Amendment Act, 1853," but subject to and with the exceptions contained in such several Acts: Provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

Candidate
declared
guilty of
bribery in-
capable of
being elected
during Par-
liament then
in existence.
Short title.

36. If any candidate at an election for any county, city, or borough shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.

37. In citing this Act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

Interpreta-
tion of
terms.

38. Throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewardry, or combined counties respectively returning a member or members to serve in Parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) return-

ing a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman, presiding in any court held for the revision of the lists of voters, or his deputy in Ireland, and a sheriff or sheriff's Court of Appeal in Scotland, and every other person whose duty it may be to hold a court for the revision and correction of the list or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament; and the words "candidate at an election" shall include all persons elected as members to serve in Parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

39. This Act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the Act. Duration of
then next session of Parliament.

The SCHEDULE A. above referred to.

Date of Act	Title of Act	Extent of Repeal
7 W. 3. c. 4. A.D. 1695.	An Act for preventing charge and expense in elections of members to serve in Parliament.	The whole Act.
2 G. 2. c. 24. A.D. 1729.	An Act for the more effectual preventing bribery and corruption in the election of members to serve in Parliament.	All the Act, except the 3rd section, prescribing the oath to be taken by returning officers, and except so far as the penalties and provisions of the said Act are applicable to the false taking of such oath, and the neglect to take the same.
16 G. 2. c. 11.	An Act to explain and amend the laws touching the elections of members to serve for the Commons in Parliament for that part of Great Britain called Scotland, and to restrain the partiality and regulate the conduct of returning officers at such elections.	So much of the Act as is contained in the 33rd section.
43 G. 3. c. 74. A.D. 1803.	An Act for further regulating the administration of the oath or affirmation required to be taken by electors of members to serve in Parliament by an Act passed in the second year of King George the Second, intituled "An Act for the more effectual preventing bribery and corruption in the election of members to serve in Parliament."	The whole Act.

Date of Act	Title of Act	Extent of Repeal
49 G. C. 3. 118. A.D. 1809.	An Act for better securing the independence and purity of Parliament, by preventing the procuring or obtaining of seats in Parliament by corrupt practices.	The whole Act.
4 G. 4. c. 55. A.D. 1823.	An Act to consolidate and amend the several Acts now in force, so far as the same relate to the election and return of members to serve in Parliament for counties of cities and counties of towns in Ireland.	So much of the Act as is contained in the 48th, 79th, and 81st sections.
7 & 8 G. 4. c. 37. A.D. 1827.	An Act to make further regulations for preventing corrupt practices at elections of members to serve in Parliament, and for diminishing the expense of such elections.	The whole Act.
2 & 3 W. 4. c. 65. A.D. 1832.	An Act to amend the representation of the people of Scotland.	So much of the 26th section of the Act and the schedule (K.) thereto annexed as relates to the oath or affirmation against bribery to be put to any registered voter at any poll or election.
2 & 3 W. 4. c. 88. A.D. 1832.	An Act to amend the representation of the people of Ireland.	So much of the 54th section of the Act as relates to administering the oath or affirmation against bribery.

Date of Act	Title of Act	Extent of Repeal
5 & 6 Vict. c. 102.	An Act for the better discovery and prevention of bribery and treating at the election of members of Parliament.	So much of the Act as is contained in the 20th and 22nd sections.

SCHEDULE B.

No. 1.—*Proclamation to be used in Counties.*

Election of Knight, &c.

THE Sheriff of the County of _____ will, at
 the _____ day of _____ now next
 ensuing, proceed to the election of a knight, or knights,
 member or members [*as the case may be*] for the county or
 division of a county [*as the case may be*], at which time and
 place all persons entitled to vote at the said election are
 requested to give their attendance.

And take notice, that all persons who are guilty of bribery
 at the said election will, on conviction of such offence, be
 liable to the penalties mentioned in that behalf in "The
 Corrupt Practices Act, 1854."

And take notice, that all persons who are guilty of treat-
 ing or undue influence at the said election will, on conviction
 of such offence, be liable to the penalties mentioned in that
 behalf in "The Corrupt Practices Prevention Act, 1854."

Signature of the proper Officer.

No. 2.—*Notice of Election in Boroughs.*

City or Borough of _____ day of _____

IN pursuance of a writ issued by me
 or electing a burgess or burgesses [*as the case may be*], to
 serve in Parliament for the city or borough [*as the case may*
be], I do hereby give notice, that I shall proceed to election
 accordingly on the _____ day of _____

at _____ o'clock, in _____, when and
 where all persons concerned are to give their attendance.

And take notice, that all persons who are guilty of bribery
 at the said election will, on conviction of such offence, be
 liable to the penalties mentioned in that behalf in "The
 Corrupt Practices Prevention Act, 1854."

And take notice, that all persons who are guilty of treat-
 ing or undue influence at the said election will, on conviction
 of such offence, be liable to the penalties mentioned in that
 behalf in "The Corrupt Practices Prevention Act."

Signature of the proper Officer.

E.

PARLIAMENTARY ELECTIONS ACT, 1868.

31 & 32 VICT. c. 125.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of Corrupt Practices at Parliamentary Elections. [31st July 1868.]

WHEREAS it is expedient to amend the laws relating to election petitions, and to provide more effectually for the prevention of corrupt practices at parliamentary elections :

Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This act may be cited for all purposes as "The Parliamentary Elections Act, 1868." Short title of act.
2. The expression "the court" shall, for the purposes of this act, in its application to England, mean the court of common pleas at Westminster, and in its application to Ireland the court of common pleas at Dublin, and such court shall, subject to the provisions of this act, have the same powers, jurisdiction and authority with reference to an election petition, and the proceedings thereon as it would have if such petition were an ordinary cause within their jurisdiction. Definition and jurisdiction of court.
3. The following terms shall in this act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction, (that is to say,) Interpretation of terms.
 - "Metropolitan district" shall mean the city of London and the liberties thereof, and any parish or place subject to the jurisdiction of the metropolitan board of works : "Metropolitan district :"
 - "Election" shall mean an election of a member or members to serve in parliament : "Election :"
 - "County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts or division of a county returning a member or members to serve in parliament : "County :"
 - "Borough" shall mean any borough, university, city, place or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in parliament : "Borough :"

- "Candidate:" "Candidate" shall mean any person elected to serve in parliament at an election, and any person who has been nominated as or declared, himself a candidate at an election:
- "Corrupt practices:" "Corrupt practices" or "corrupt practice" shall mean bribery, treating and undue influence, or any of such offences, as defined by act of parliament, or recognized by the common law of parliament:
- "Rules of court:" "Rules of court" shall mean rules to be made as herein-after mentioned:
- "Prescribed:" "Prescribed" shall mean "prescribed by the rules of court."
- Provision as to speaker. 4. For the purposes of this act "speaker" shall be deemed to include deputy speaker; and when the office of speaker is vacant, the clerk of the house of commons, or any other officer for the time being performing the duties of the clerk of the house of commons, shall be deemed to be substituted for and to be included in the expression "the speaker."

Presentation and Service of Petition.

- To whom and by whom election petition may be presented. 5. From and after the next dissolution of parliament a petition complaining of an undue return or undue election of a member to serve in parliament for a county or borough may be presented to the court of common pleas at Westminster, if such county or borough is situate in England, or to the court of common pleas at Dublin, if such county or borough is situate in Ireland, by any one or more of the following persons:
1. Some person who voted or who had a right to vote at the election to which the petition relates; or,
 2. Some person claiming to have had a right to be returned or elected at such election; or,
 3. Some person alleging himself to have been a candidate at such election:
- And such petition is hereinafter referred to as an election petition.
- Regulations as to presentation of election petition. 6. The following enactments shall be made with respect to the presentation of an election petition under this act:—
1. The petition shall be signed by the petitioner or all the petitioners if more than one:
 2. The petition shall be presented within twenty-one days after the return has been made to the clerk of the crown in chancery in England, or to the clerk of the crown and hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity,

since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment:

3. Presentation of a petition shall be made by delivering it to the prescribed officer or otherwise dealing with the same in manner prescribed:

4. At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner—

(a) To any person summoned as a witness on his behalf; or,

(b) To the member whose election or return is complained of (who is hereinafter referred to as the respondent),

shall be given on behalf of the petitioner:

5. The security shall be to the amount of one thousand pounds; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.

7. On presentation of the petition the prescribed officer shall send a copy thereof to the returning officer of the county or borough to which the petition relates, who shall forthwith publish the same in the county or borough, as the case may be.

Copy of petition after presentation to be sent to returning officer.

8. Notice of the presentation of a petition under this act, and of the nature of the proposed security, accompanied with a copy of the petition, shall, within the prescribed time, not exceeding five days after the presentation of the petition, be served by the petitioner on the respondent; and it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, within a further prescribed time, not exceeding five days from the date of the service on him of the notice, to object in writing to such recognizance, on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

Recognizance may be objected to.

9. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time, not exceeding five days, to remove such objection, by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient.

Determination of objection to recognizance.

If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue.

List of petitions at issue to be made.

10. The prescribed officer shall, as soon as may be, make out a list of all petitions under this act presented to the court of which he is such officer, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection in the prescribed manner of any person making application.

Such petitions, as far as conveniently may be, shall be tried in the order in which they stand in such list.

Trial of a Petition.

Mode of trial of election petitions.

11. The following enactments shall be made with respect to the trial of election petitions under this act:—

1. The trial of every election petition shall be conducted before a puisne judge of one of her majesty's superior courts of common law at Westminster or Dublin, according as the same shall have been presented to the court at Westminster or Dublin, to be selected from a rota to be formed as hereinafter mentioned:
2. The members of each of the courts of queen's bench, common pleas and exchequer in England and Ireland shall respectively, on or before the third day of Michaelmas term in every year, select, by a majority of votes, one of the puisne judges of such court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year:
3. If in any case the members of the said court are equally divided in their choice of a puisne judge to be placed on the rota, the chief justice of such court (including under that expression the chief baron of the exchequer) shall have a second or casting vote:
4. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year:
5. In the event of the death or the illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the court to which he belongs shall fill up the vacancy by placing on the rota another puisne judge of the same court:
6. The judges for the time being on the rota shall, according to their seniority, respectively try the election petitions standing for trial under this Act, unless they

otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement :

7. When it appears to the judges on the rota, after due consideration of the list of petitions under this act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, each of the said courts (that is to say), the court of exchequer, the court of common pleas and court of queen's bench, in the order named, shall, on and according to the requisition of such judges on the rota, select, in manner hereinbefore provided, one of the puisne judges of the court to try election petitions for the ensuing year ; and any judge so selected shall, during that year, be deemed to be on the rota for the trial of election petitions :
8. Her majesty may, in manner heretofore in use, appoint an additional puisne judge to each of the courts of queen's bench, the common pleas, and the exchequer in England :
- 9 Every election petition shall, except where it raises a question of law for the determination of the court, as hereinafter mentioned, be tried by one of the judges hereinbefore in that behalf mentioned, hereinafter referred to as the judge sitting in open court without a jury
- 10 Notice of the time and place at which an election petition will be tried shall be given, not less than fourteen days before the day on which the trial is held, in the prescribed manner :
11. The trial of an election petition, in the case of a petition relating to a borough election, shall take place in the borough, and in the case of a petition relating to a county election, in the county : provided always, that if it shall appear to the court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough or county, it shall be lawful for the court to appoint such other place for the trial as shall appear most convenient : provided also, that in the case of a petition relating to any of the boroughs within the metropolitan district, the petition may be heard at such place within the district as the court may appoint :
12. The judge presiding at the trial may adjourn the same from time to time, and from any one place to any other place within the county or borough, as to him may seem expedient :
13. At the conclusion of the trial the judge who tried the

petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the speaker, and upon such certificate being given such determination shall be final to all intents and purposes :

14. Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall, in addition to such certificate, and at the same time, report in writing to the speaker as follows :

- (a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice ;
- (b.) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice :
- (c.) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates.

15. The judge may at the same time make a special report to the speaker as to any matters arising in the course of the trial an account of which in his judgment ought to be submitted to the house of commons :

16. Where, upon the application of any party to a petition made in the prescribed manner to the court, it appears to the court that the case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the court, and the decision of the court shall be final ; and the court shall certify to the speaker its determination in reference to such special case.

Applications
to the court
respecting
trials.

12. Provided always, that if it shall appear to the judge on the trial of the said petition that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the court of common pleas, then it shall be lawful for the said judge to postpone the granting of the said certificate until the determination of such question or questions by the court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a judge on a trial at nisi prius.

House of
commons to
carry out re-
port.

13. The house of commons, on being informed by the speaker of such certificate and report or reports, if any, shall order the same to be entered in their journals, and shall give the necessary directions for confirming or altering the return,

or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.

14. Where the judge makes a special report the house of commons may make such order in respect of such special report as they think proper.

House of commons may make order on special report.

15. If the judge states in his report on the trial of an election petition under this act that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county or borough at the election to which the petition relates, such statement shall for all the purposes of the act of the session of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-seven, intituled "An Act to provide for more effectual Inquiry into the existence of Corrupt Practices at Elections of Members to serve in Parliament," have the same effect and may be dealt with in the same manner as if it were a report of a committee of the house of commons appointed to try an election petition, and the expenses of any commission of inquiry which may be issued in accordance with the provisions of the said act shall be defrayed as if they were expenses incurred in the registration of voters for such county or borough.

Report of the judge as to corrupt practices.

16. The report of the judge in respect of persons guilty of corrupt practices shall for the purpose of the prosecution of such persons, in pursuance of section nine of the act of the twenty-sixth year of the reign of her present majesty, chapter twenty-nine, have the same effect as the report of the election committee therein mentioned, that certain persons have been guilty of bribery and treating.

Report of judge equivalent to report of election committee.

17. On the trial of an election petition under this act, unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

Evidence of corrupt practices how received.

18. The trial of an election petition under this act shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the crown.

Acceptance of office not to stop petition.

19. The trial of an election petition under this act shall be proceeded with notwithstanding the prorogation of parliament (a).

Prorogation of parliament.

Proceedings.

20. An election petition under this act shall be in such form and state such matters as may be prescribed.

Form of petition.

21. An election petition under this act shall be served as nearly as may be in the manner in which a writ or summons is served, or in such other manner as may be prescribed.

Service of petition.

22. Two or more candidates may be made respondents to

Joint respondents to petition.

(a) A dissolution abates a petition—per Bramwell, B.

the same petition, and their case may for the sake of convenience be tried at the same time, but for all the purposes of this act such petition shall be deemed to be a separate petition against each respondent.

Provision in cases where more than one petition is presented.

23. Where, under this act, more petitions than one are presented relating to the same election or return, all such petitions shall in the election list be bracketed together, and shall be dealt with as one petition, but such petitions shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the court shall otherwise direct.

Shorthand writer to attend trial of election petition.

24. On the trial of an election petition under this act the shorthand writer of the house of commons or his deputy shall attend and shall be sworn by the judge faithfully and truly to take down the evidence given at the trial, and from time to time as occasion requires to write or cause the same to be written in words at length; and it shall be the duty of such shorthand writer to take down such evidence, and from time to time to write or cause the same to be written at length, and a copy of such evidence shall accompany the certificate made by the judge to the speaker; and the expenses of the shorthand writer shall be deemed to be part of the expenses incurred in receiving the judge.

Jurisdiction and Rules of Court.

Rules to be made by court.

25. The judges for the time being on the rota for the trial of election petitions in England and Ireland may respectively from time to time make, and may from time to time revoke and alter, general rules and orders (in this act referred to as the rules of court) for the effectual execution of this act, and of the intention and object thereof, and the regulation of the practice, procedure and costs of election petitions and the trial thereof, and the certifying and reporting thereon.

Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this act, and shall be of the same force as if they were enacted in the body of this act.

Any general rules and orders made in pursuance of this section shall be laid before parliament within three weeks after they are made, if parliament be then sitting, and if parliament be not then sitting, within three weeks after the beginning of the then next session of parliament.

Practice of house of commons to be observed.

26. Until rules of court have been made in pursuance of this act, and so far as such rules do not extend, the principles, practice and rules on which committees of the house of commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this act.

27. The duties to be performed by the prescribed officer under this act shall be performed by such one or more of the masters of the court of common pleas at Westminster as may be determined by the chief justice of the said court of common pleas, and by the master of the court of common pleas at Dublin, and there shall be awarded to such masters respectively in addition to their existing salaries such remuneration for the performance of the duties imposed on them in pursuance of this act as the chief justices of the said courts of common pleas at Westminster and Dublin may respectively, with the consent of the commissioners of the treasury, determine.

Performance of duties by prescribed officer.

Reception, Expenses and Jurisdiction of Judge.

28. The judge shall be received at the place where he is about to try an election petition under this act with the same state, so far as circumstances admit, as a judge of assize is received at an assize town; he shall be received by the sheriff in the case of a petition relating to a county election, and in any other case by the mayor, in the case of a borough having a mayor, and in the case of a borough not having a mayor by the sheriff of the county in which the borough is situate, or by some person named by such sheriff.

Reception of judge.

The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff or by such mayor or person named as aforesaid in receiving the judge and providing him with necessary accommodation and with a proper court, shall be defrayed by the commissioners of the treasury out of money to be provided by parliament.

29. On the trial of an election petition under this act the judge shall, subject to the provisions of this act, have the same powers, jurisdiction and authority as a judge of one of the superior courts and as a judge of assize and nisi prius, and the court held by him shall be a court of record.

Power of judge.

30. The judge shall be attended on the trial of an election petition under this act in the same manner as if he were a judge sitting at nisi prius, and the expenses of such attendance shall be deemed to be part of the expenses of providing a court.

Attendance on judge.

Witnesses.

31. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial at nisi prius, and shall be subject to the same penalties for perjury.

Summons of witnesses.

32. On the trial of an election petition under this act the judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any

Judge may summon and examine witnesses.

person refusing to obey such order shall be guilty of contempt of court. The judge may examine any witness so compelled to attend or any person in court although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Indemnity
to witnesses.

33. The provisions of the seventh section of the act of the session of the twenty-sixth and twenty-seventh years of the reign of her present majesty, chapter twenty-nine, relating to the examination and indemnity of witnesses, shall apply to any witness appearing before a judge on the trial of an election petition under this act, in the same manner as in the case of a trial before a committee of the house of commons before the passing of this act, and the certificate shall be given under the hand of the judge.

Expenses of
witnesses.

34. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this act, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate under the hand of the judge or of the prescribed officer, and such expenses, if the witness was called and examined by the judge, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition.

Withdrawal and abatement of Election Petitions.

Withdrawal
of petition
and substitution
of new petitioners.

35. An election petition under this act shall not be withdrawn without the leave of the court or judge upon special application, to be made in and at the prescribed manner, time and place.

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the county or borough to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The court or judge may, if it or he thinks fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the court or judge induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original

petitioner shall be liable to pay the costs of the substituted petitioner.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities as the original petitioner.

If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

36. In every case of the withdrawal of an election petition under this act the court or judge shall report to the speaker whether in its or his opinion the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so the circumstances attending the withdrawal. Court to report to the speaker circumstances of withdrawal.

37. An election petition under this act shall be abated by the death of a sole petitioner or of the survivor of several petitioners. Abatement of petition.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge, in and at the prescribed manner, time and place to be substituted as a petitioner.

The court or judge may, if it or he thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition.

38. If before the trial of any election petition under this act any of the following events happen in the case of the respondent (that is to say)— Admission in certain cases of voters to be respondents.

- (1.) If he dies;
- (2.) If he is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain;

(3.) If the house of commons have resolved that his seat is vacant ;

(4.) If he gives in and at the prescribed manner and time notice to the court that he does not intend to oppose the petition ;

notice of such event having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent ; and any number of persons not exceeding three may be so admitted.

Respondent
not opposing
not to ap-
pear as party
or to sit.

39. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the house of commons until the house of commons has been informed of the report on the petition ; and the court or judge shall in all cases in which such notice has been given in the prescribed time and manner report the same to the speaker of the house of commons.

Provisions
for cases of
double re-
turn where
the member
complained
of declines
to defend his
return.

40. Where an election petition under this act complains of a double return and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer, and upon the receipt of such notice the prescribed officer shall report the fact of the withdrawal of such petition to the speaker, and the house of commons shall thereupon give the necessary directions for amending the said double return by taking off the file the indenture by which the respondent so declining to oppose the petition was returned, or otherwise as the case may require: *provided always, that this section shall not apply to Ireland.**

Costs.

General
costs of
petition.

41. All costs, charges and expenses of and incidental to the presentation of a petition under this act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge

* Repealed by Ballot Act, 1872.

may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the court or judge, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful.

The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client are taxed in a suit in the high court of chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.

42. If any petitioner in an election petition presented under this act neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the court of elections, in every such case every person who has entered into a recognizance relating to such petition under the provisions of this act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in England in manner provided by the act of the third year of the reign of king George the fourth, chapter forty-six, and in Ireland in manner provided by "The Fines Act (Ireland), 1851."

Recognizance, when to be estimated, &c.

Punishment of Corrupt Practices.

43. Where it is found, by the report of the judge upon an election petition under this act, that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the house of commons during the seven years next after the date of his being found guilty; and he shall further be incapable during the said period of seven years—

Punishment of candidate guilty of bribery.

- (1.) Of being registered as a voter and voting at any election in the united kingdom; and,
- (2.) Of holding any office under the act of the session of the fifth and six years of the reign of his majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign

of her present majesty, chapter one hundred and eight, or any municipal office ; and,

- (3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

Penalty for
employing
corrupt
agent.

44. If on the trial of any election petition under this act any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a committee of the house of commons, or by the report of the judge upon an election petition under this act, or by the report of commissioners appointed in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-seven, the election of such candidate shall be void.

Disqualifi-
cation of
persons
found
guilty of
bribery.

45. Any person, other than a candidate, found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall, during the seven years next after the time at which he is so found guilty, be incapable of being elected to and sitting in Parliament ; and also be incapable—

- (1.) Of being registered as a voter and voting at any election in the united kingdom ; and,
- (2.) Of holding any office under the act of the session of the fifth and sixth years of the reign of his majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of her present majesty, chapter one hundred and eight, or any municipal office ; and,
- (3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

An enactment
of the law
relating to
the disquali-
fication of
candidates
for corrupt
practices.

46. For the purpose of disqualifying, in pursuance of the thirty-sixth section of "The Corrupt Practices Prevention Act, 1854," a member guilty of corrupt practices, other than personal bribery within the forty-third section of this act, the report of the judge on the trial of an election petition shall be deemed to be substituted for the declaration of an election committee, and the said section shall be construed as if the words "reported by a judge on the trial of an election petition" were inserted therein in the place of the words "declared by an election committee."

Removal of
disqualifica-
tion on proof
that dis-
qualification
was pro-
cured by
perjury.

47. If at any time after any person has become disqualified by virtue of this act, the witnesses, or any of them, on whose testimony such person shall have so become disqualified, shall, upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall,

upon being satisfied that such disqualification was procured by reason of perjury, order, that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Miscellaneous.

48. If any returning officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in parliament for any county or borough, such person may, in case it has been determined on the hearing of an election petition under this act that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected or refused duly to make such return at his election in any of her majesty's courts of record at Westminster, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election.

Returning officer may be sued for neglecting to return any person duly elected.

49. In reckoning time for the purposes of this act, Sunday, Christmas-day, Good Friday and any day set apart for a public fast or public thanksgiving shall be excluded.

Calculation of time.

50. From and after the next dissolution of parliament no election or return to parliament shall be questioned except in accordance with the provisions of this act, but until such dissolution, elections and returns to parliament may be questioned in manner heretofore in use.

Controverted elections to be tried under act.

51. Where an election petition under this act complains of the conduct of a returning officer, such returning officer shall for all the purposes of this act, except the admission of respondents in his place, be deemed to be a respondent.

Returning officer if complained of to be respondent.

52. A petition under this act complaining of no return may be presented to the court, and shall be deemed to be an election petition within the meaning of this act, and the court may make such order thereon as they think expedient for compelling a return to be made, or may allow such petition to be heard by the judge in manner hereinbefore provided with respect to ordinary election petitions.

Petition complaining of no return.

53. On the trial of a petition under this act complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

Recrimination when petition for undue return.

54. From and after the next dissolution of parliament the acts contained in the schedule hereto are repealed so far as relates to elections and petitions to the extent therein mentioned; provided that such repeal shall not affect the validity or invalidity of anything already done or suffered,

Repeal of acts.

Provision as to payment of additional judges and remuneration of judges for duties to be performed under this act.

Commissions of inquiry into corrupt practices.

Rules as to agents practising in cases of election petitions.

Application of act to Scotland.

or any offence already committed, or any remedy or proceeding in respect thereof, or the proof of any past act or thing.

55. The additional puisne judges appointed under this act to each of the courts of queen's bench, the common pleas and the exchequer in England shall, as to rank, salary, pension, attendant officers, jurisdiction and all other privileges and duties of a judge, stand in the same position as the other puisne judges of the court to which he is attached.

Any puisne judge of the said courts appointed in pursuance of or after the passing of this act shall be authorized to sit, and shall, when requested by the lord chancellor, sit as judge of the court of probate and court of marriage and divorce or of the admiralty court.

56. If upon a petition to the house of commons, presented within twenty-one days after the return to the clerk of the crown in chancery in England, or to the clerk of the crown and hanaper in Ireland, of a member to serve in parliament for any borough or county, or within fourteen days after the meeting of parliament, and signed by two or more electors of such borough or county, and alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both houses of parliament, praying that such allegation may be inquired into, the crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the statute of the fifteenth and sixteenth of Victoria, chapter fifty-seven.

57. Any person who at the time of the passing of this act was entitled to practise as agent, according to the principles, practice and rules of the house of commons in cases of election petitions and matters relating to election of members of the house of commons, shall be entitled to practise as an attorney or agent in cases of election petitions and all matters relating to elections before the court and judges prescribed by this act: provided, that every such person so practising as aforesaid shall, in respect of such practice and everything relating thereto, be subject to the jurisdiction and orders of the court as if he were an attorney of the said court: and further, provided, that no such person shall practise as aforesaid until his name shall have been entered on a roll to be made and kept, and which is hereby authorised to be made and kept, by the prescribed officer in the prescribed manner.

58. The provisions of this act shall apply to Scotland, subject to the following modifications:

1. The expression "the court" shall mean either division of the inner house of the court of session, and either

of such divisions shall have the same powers, jurisdiction and authority with reference to an election petition in Scotland, and the proceedings thereon, which by this act are conferred on the court of common pleas at Westminster with respect to election petitions in England:

2. The expression "county" shall not include a county of a city, but shall mean any county or division of a county or any combination of counties, or of counties and portions of counties, returning a member to serve in parliament:
3. The expression "borough" shall mean any university or universities, or any city, town, burgh or district of cities, towns, or burghs, returning a member or members to serve in parliament:
4. "Recognizance" shall mean a bond of caution with usual and necessary clauses:
5. The trial of every election petition in Scotland shall be conducted before a judge of the court of session, to be selected from a rota to be formed as hereinafter mentioned:
6. The judges of the court of session shall, on or before the first day of the winter session in every year, select, by a majority of votes, two of the judges of such court, not being members of the house of lords, to be placed on the rota for the trial of election petitions during the ensuing year:
7. If in any case the judges of the said court are equally divided in their choice of a judge to be placed on the rota, the lord president shall have a second or casting vote:
8. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year:
9. In the event of the death or illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the judges shall fill up the vacancy by placing on the rota another judge:
10. The judges for the time being on the rota shall, according to their seniority, respectively try the election petitions standing for trial under this act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement:
11. Where it appears to the judges on the rota, after due consideration of the list of petitions under this act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, the judges of the court of session

shall, on and according to the requisition of such judges on the rota, select in manner hereinbefore provided, a judge to try election petitions for the ensuing year; and any judge so selected shall during that year be deemed to be on the rota for the trial of election petitions:

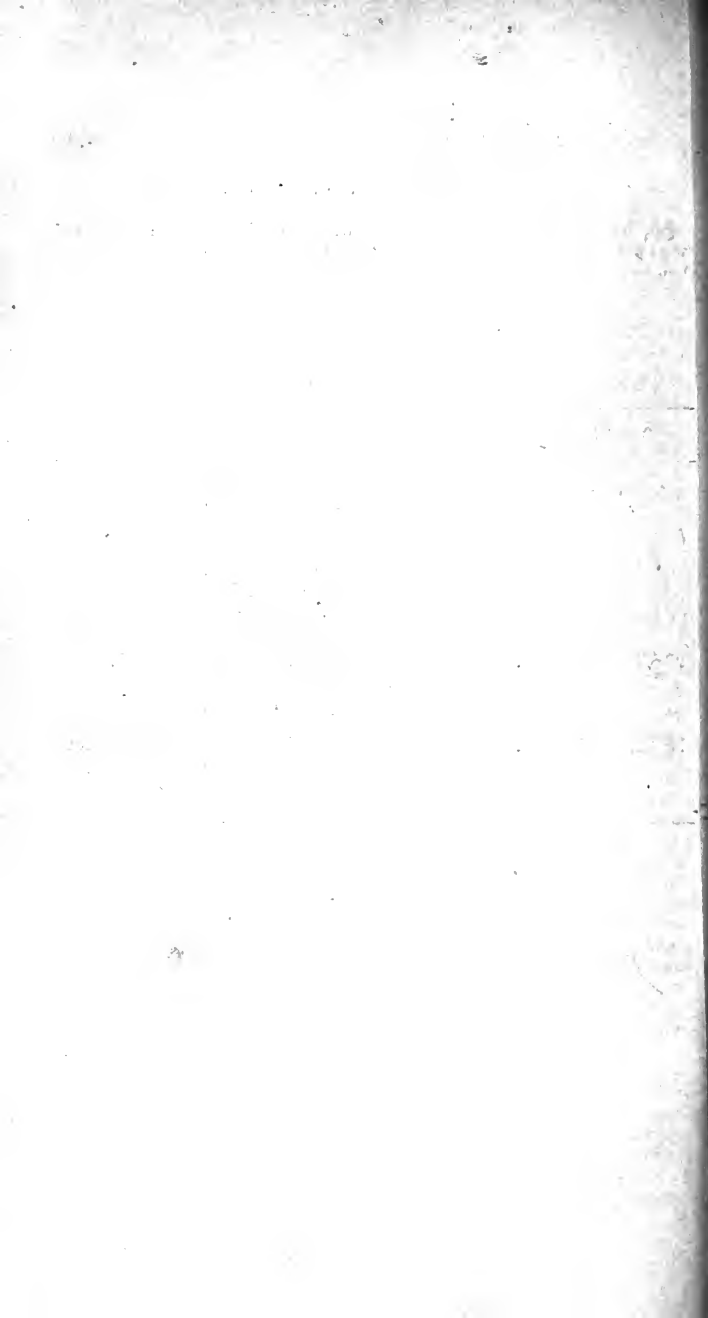
12. The duties to be performed by the prescribed officer under this act with reference to election petitions in Scotland shall be performed by such one or more of the principal clerks of session as may be determined by the lord president of the court of session; and there shall be awarded to such principal clerk or clerks, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this act as the said lord president may, with the consent of the commissioners of the treasury, determine:
13. The judge shall be received at the place where he is about to try an election petition under this act in the same manner and by the same authorities, as far as circumstances admit, as a judge of the court of justiciary is received at a circuit town, and he shall be attended by such officer or officers as shall be necessary.
14. The travelling and other expenses of the judge, and of the officer or officers in attendance upon him, and all expenses properly incurred in providing the judge with a proper court, shall be defrayed by the commissioners of the treasury out of money to be provided by Parliament:
15. On the trial of an election petition under this act, the judge shall, subject to the provisions of this act, have the same powers, jurisdictions and authority as a judge of the court of session presiding at the trial of a civil cause without a jury:
16. The principles of taxation of costs as between attorney and client in a suit in the high court of chancery shall in Scotland mean the principles of taxation of expenses as between agent and client in the court of session:
17. Any of her majesty's courts of record at Westminster shall in Scotland mean the court of session in Scotland:
18. In lieu of the provisions for the estreating of a recognizance under an election petition, the prescribed officer shall, when otherwise competent under the provisions of this act, certify that the conditions contained in the bond of caution have not been fulfilled, and it shall then be competent for the party or

parties interested to register the said bond, and do diligence upon it as accords of law.

59. This act shall be in force until the expiration of three years from the passing of such act, and to the end of the then next session of parliament. Duration of act.

SCHEDULE.

Date of Act	Title of Act	Extent of Repeal
4 & 5 Vict. c. 57 .	An Act for the prevention of Bribery at Elections	The whole Act.
5 & 6 Vict. c. 102	An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament	The whole Act.
11 & 12 Vict. c. 98	An Act to amend the Law for the Trial of Election Petitions	The whole Act.
26 Vict. c. 29 .	An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament	Section 8.
28 Vict. c. 8 .	An Act to amend "The Election Petitions Act, 1848," in certain Particulars	The whole Act.



F.

35 & 36 VICTORIA.

CHAPTER 33.

An act to amend the Law relating to Procedure at Parliamentary and Municipal Elections. [18th July 1872.]

WHEREAS it is expedient to amend the law relating to procedure at parliamentary and municipal elections:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

PART I.

PARLIAMENTARY ELECTIONS.

Procedure at Election.

1. A candidate for election to serve in parliament for a county or borough shall be nominated in writing. The writing shall be subscribed by two registered electors of such county or borough as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and shall be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder.

Nomination
of candidates
for parlia-
mentary
elections.

If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer shall forthwith declare the candidates who may stand nominated to be elected, and return their names to the clerk of the crown in chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer shall adjourn the election and shall take a poll in manner in this act mentioned.

A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer: Provided, that the proposer of a candidate nominated in his absence out of the united kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate.

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates

Poll at elections.

nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the clerk of the crown in chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.

Offences at Elections.

3. Every person who,—
 1. Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or
 2. Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
 3. Without due authority supplies any ballot paper to any person; or
 4. Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
 5. Fraudulently takes out of the polling station any ballot paper; or
 6. Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

Offences in respect of nomination papers, ballot papers, and ballot boxes.

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained

Infringement of secrecy.

in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Amendment of Law.

Division of
counties and
boroughs
into polling
districts.

5. The local authority (as hereinafter defined) of every county shall by order, as soon as may be practicable after the passing of this act, divide such county into polling districts, and assign a polling place to each district, in such manner that, so far as is reasonably practicable, every elector resident in the county shall have a polling place within a distance not exceeding four miles from his residence, so, nevertheless, that a polling district need not in any case be constituted containing less than one hundred registered electors.

The local authority (as hereinafter defined) of every borough shall take into consideration the division of such borough into polling districts, and, if they think it desirable, by order, divide such borough into polling districts in such manner as they may think most convenient for taking the votes of the electors at a poll.

The local authority of every county and borough shall, on or before the first day of May one thousand eight hundred and seventy-three, send to one of her majesty's principal secretaries of state, to be laid by him before both houses of parliament, a copy of any order made by such authority in pursuance of this section, and a report, in such form as he may require, stating how far the provisions of this act with respect to polling districts have been complied with in their county or borough; and if they make any order after the first day of May one thousand eight hundred and seventy-three, with respect to polling districts or polling places in their county or borough, they shall send a copy of such order

to the said secretary of state, to be laid by him before both houses of parliament.

The local authority of a county or borough in this section means the authority having power to divide such county or borough into polling districts under section thirty-four of the Representation of the People Act, 1867, and any enactments amending that section; and such authority shall exercise the powers thereby given to them for the purposes of this section; and the provisions of the said section as to the local authority of a borough constituted by the combination of two or more municipal boroughs shall apply to a borough constituted by the combination of a municipal borough and other places, whether municipal boroughs or not; and in the case of a borough of which a town council is not the local authority, and which is not wholly situate within one petty sessional division, the justices of the peace for the county in which such borough or the larger part thereof in area is situate, assembled at some court of general or quarter sessions, or at some adjournment thereof, shall be the local authority thereof and shall for this purpose have jurisdiction over the whole of such borough; and in the case of such borough and of a county, a court of general sessions shall be assembled within twenty-one days after the passing of this act, and any such court may be assembled and adjourned from time to time for the purpose.

No election shall be questioned by reason of any non-compliance with this section or any informality relative to polling districts or polling places, and any order made by a local authority in relation to polling districts or polling places shall apply only to lists of voters made subsequently to its date, and to registers of voters formed out of such lists, and to elections held after the time at which a register of voters so formed has come into force; provided that where any such order is made between the first day of July and the first day of November in any year, and does not create any new division between two or more polling districts of any parish for which a separate poor rate is or can be made, such order shall apply to the register of voters which comes into force next after such order is made, and to elections held after that register so comes into force; and the clerk of the peace or town clerk, as the case may be, shall copy, print, and arrange the lists of voters for the purpose of such register in accordance with such order.

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any

Use of school and public room for poll.

expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

Conclusive-
ness of
register of
voters.

7. At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote: provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of parliament, or relieve such person from any penalties to which he may be liable for voting.

Duties of Returning and Election Officers.

General
powers and
duties of
returning
officer.

8. Subject to the provisions of this act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this act.

All expenses properly incurred by any returning officer in carrying into effect the provisions of this act, in the case of any parliamentary election, shall be payable in the same manner as expenses incurred in the erection of polling booths at such election are by law payable.

Where the sheriff is returning officer for more than one county as defined for the purposes of parliamentary elections, he may, without prejudice to any other power, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to an election in any such county, and may, by himself or such deputy, exercise any powers and do any things which the returning officer is authorised or required to exercise or do in relation to such election. Every such deputy, and also any under sheriff, shall, in so far as he acts as returning officer, be deemed to be included in the term returning officer in the provisions of this act relating to parliamentary elections, and the enactments with which this part of this act is to be construed as one.

Keeping of
order in
station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the

returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before the justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this act to be taken before him.

Powers of presiding officer and administration of oaths, &c.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

Liability of officers for misconduct

Section fifty of the Representation of the People Act, 1867, (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate,) shall apply to any returning officer or officer appointed by him in pursuance of this act, and to his partner or clerk.

30 and 31 Vict. c. 102.

Miscellaneous.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Prohibition of disclosure of vote.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this act, or any mistake in the use of the forms in the second schedule to this act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this act, and that such noncompliance or mistake did not affect the result of the election.

Non-compliance with rules.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal

Use of municipal ballot boxes, &c. for parlia-

mentary election, and vice versa.

borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

Construction of act.

15. This part of this act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in parliament, and with any enactments otherwise relating to the subject matter of this part of this act, and terms used in this part of this act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this act.

Application of Part of Act to Scotland.

Alterations for application of Part I. to Scotland.

16. This part of this act shall apply to Scotland, subject to the following provisions:—

1. The expression "crime and offence" shall be equivalent to the expression "misdemeanor," and shall be substituted therefor:
2. All offences under this act for which any person may be punished on summary conviction shall be prosecuted before the sheriff under the provisions of The Summary Procedure Act, 1864; and all jurisdictions, powers, and authorities necessary for that purpose are hereby conferred on sheriffs:
3. The expression "sheriff" shall include sheriff substitute:
4. The provisions of this act relating to the division of counties and boroughs into polling districts shall not apply to Scotland:
5. The ballot boxes, ballot papers, stamping instruments, and other requisites for a parliamentary election shall

be provided and paid for in the same manner as polling rooms or booth under the fortieth section of the act of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland;" and the reasonable remuneration of presiding officers, assistants, and clerks employed by the returning officer at such an election, and all other expenses properly incurred by the returning officer, and by sheriff clerks and town clerks, in carrying into effect the provisions of this act, shall be paid by the candidates; provided always, that if any person shall be proposed as a candidate without his consent the person so proposing him shall be liable to defray his share of all those expenses in like manner as if he had been a candidate himself; provided also, that the fee to be paid to each presiding officer shall in no case exceed the sum of three guineas per day, and the fee to be paid to each assistant to the returning officer shall not exceed two guineas per day, and the fee to be paid to each clerk shall not exceed one guinea per day.

Application of Part of Act to Ireland.

17. This part of this act shall apply to Ireland, subject to the following modifications:—
1. The expression "Clerk of the Crown in Chancery" shall mean the Clerk of the Crown and Hanaper in Ireland:
2. The preceding provisions of this part of this act with respect to the division of counties and boroughs into polling districts shall not extend to Ireland:
3. In the construction of the preceding provisions of this part of this act as applying to Ireland, section thirteen of "The Representation of the People (Ireland) Act, 1868," shall be substituted for section fifty of "The Representation of the People Act, 1867," wherever in such provisions the said last-mentioned section occurs. The provision contained in the sixth section of this act providing for the use of schoolrooms free of charge, for the purpose of taking the poll at elections, shall not apply to any school adjoining or adjacent to any church or other place of worship, nor to any school connected with a nunnery or other religious establishment:
4. No returning officer shall be entitled to claim or be paid any sum or sums of money for the erection of polling booths or stations and compartments other than the sum or sums actually and necessarily incurred and

Alterations
for applica-
tion of Part
I. to Ireland.

paid by him in reference to the same, any statute or statutes to the contrary now in force notwithstanding, nor shall the expenses of providing sufficient polling stations or booths and compartments at every polling place exceed the sum or sums now given and allowed by statute in Ireland.

Provisions as
to polling
districts and
polling
places in
Ireland.

18. With respect to polling districts and polling places in Ireland, the following regulations shall have effect; that is to say,

1. The lord lieutenant, by and with the advice of the privy council in Ireland, shall appoint special sessions to be held by the chairman of quarter sessions and justices of the peace having jurisdiction in each county or riding of a county in Ireland, at such places and times before the first day of November next after the passing of this as shall seem fit for the purpose of dividing such county or riding into polling districts and appointing polling places for such districts.
2. The clerk of the said privy council shall cause each such appointment to be notified to the clerk of the peace of the county to which the same relates, and shall cause notice of the same to be published twice in each of two consecutive weeks in one or more newspapers usually circulated in such county, and once in the "Dublin Gazette":
3. The clerk of the peace of each county in Ireland shall, within five days after the receipt of such notification as aforesaid, send a written or printed notice of the same to the chairman and to every justice of the peace having jurisdiction within the county or riding to which the same relates:
4. The chairman of quarter sessions and the justices of the peace having jurisdiction in any county or riding assembled at such special sessions appointed in manner aforesaid, or at any adjournment of the same before the first day of December next after the passing of this act, shall make an order dividing such county or riding of a county into polling districts, and appointing in each such polling district a place (in this section referred to as a "polling place") for taking the poll at contested elections of members to serve in parliament for such county:
5. Every such division shall be made in such manner so that, as far as practicable, every building or place in such county in which petty sessions are at the time of the passing of this act held shall be a polling place: Provided always, that where it appears to the chairman and justices assembled at special sessions that, for the purpose of affording full facilities for

taking the poll at contested elections, there should be polling places in addition to such buildings or places where petty sessions are held as aforesaid, they shall appoint so many polling places in addition to such buildings or places as they may think necessary, and constitute a polling district for each such polling place:

6. Every such order shall specify the barony or baronies, half barony or half baronies, townland or townlands, parish or parishes, and places constituting each such polling district:
7. A copy of every such order shall forthwith be sent by the clerk of the peace for such county to the clerk of the said privy council, who thereupon shall submit the same for confirmation by the lord lieutenant and privy council in Ireland, in the manner by this act provided, and such order shall not be of any validity until the same has been so confirmed:
8. Notice of the intended confirmation of any such order shall be given by the clerk of the said privy council at least one month before the day fixed for such confirmation by the publication of such notice and order in one or more newspapers circulating within such county or riding to which the order has reference:
9. It shall be lawful for the lord lieutenant and privy council, on the day fixed for the intended confirmation of any such order, to confirm the same as it stands, or with such variation, alteration, or modification as may seem fit: Provided always, that where any person is dissatisfied with any such order it shall be lawful for such person, within fourteen days after the publication of the notice of the intended confirmation of such order, to appeal against the same, and such appeal shall be in writing, stating the grounds thereof, and shall be signed by such person, and shall within such time be lodged with the clerk of the privy council; and it shall be lawful for the lord lieutenant and privy council, previous to the confirmation of any such order, to hear and determine such appeal against the same, and to make such order as to the costs of such appeal as may seem meet:
10. When any such order has been confirmed as aforesaid, the clerk of the said privy council shall transmit a copy of the same to the clerk of the peace of the county to which the same relates, and shall cause the same to be published once in the "Dublin Gazette," and once in the newspaper in which the notice of intended confirmation was published:

11. The provisions of the act of the session of the twenty-seventh and twenty-eighth years of the reign of her present majesty, chapter twenty-two, for ascertaining the voters in the new or altered polling districts referred to in the ninth section of the said act, and for making separate lists of voters, and otherwise in relation thereto, shall extend and apply to every case in which any order in relation to any county has been confirmed under the authority of this section, in like manner as if such sections were herein re-enacted, and the polling districts to which the same refer or apply had been polling districts constituted under the authority of this section; and the register of voters in force in such county at the time of confirming such order as amended by the printed books given into the custody of the sheriff of such county in manner by the said act provided, and the said printed books, shall be the register of persons entitled to vote at any election of a member or members to serve in parliament which shall take place in and for such county until the first day of January next after the giving of the said books as aforesaid: Provided always, that in the construction of the said provisions, the terms "the passing of this act" and the "said act" shall respectively be construed to mean the confirming of any order made under the authority of this section and this act:
12. At any election of a member or members to serve in parliament for any county to which any such order relates held after the confirming of any such order, and before the register of voters to be formed subsequently to the date of the confirming of such order under the provisions of this section shall be in force, the poll shall be taken as if no such order had been made:
13. All precepts, notices, and forms relating to the registration of voters shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this act into effect:
14. When the chairman of quarter sessions and justices of the peace having jurisdiction in any county or riding in Ireland, assembled at any general or quarter sessions in any division of such county or riding, are of opinion that for the purpose of affording further facilities for polling at contested elections there should be within such district polling places in addition to the places appointed in manner aforesaid, they may by resolution determine that at the next general or quarter sessions in such division

of such county the necessity for such additional polling places shall be considered by the chairman and justices assembled at the same:

15. The clerk of the peace of such county shall, within five days after the making of such resolution, send a written or printed copy of the same to the chairman and to every justice of the peace having jurisdiction within the county to which the same relates, and shall cause a copy of such resolution to be published twice in each of two consecutive weeks in some newspaper circulated in such county:
16. The said chairman and justices assembled at such general or quarter sessions holden next after the making of such resolution shall consider whether additional polling places are necessary, and if they are of such opinion they may, by an order to be made in like manner and subject to the same provisions as to the making, confirming, and taking effect of the same as are in this section contained in relation to orders to be made at special sessions under the authority of the same, appoint such other places to be polling places as they shall think fit, and shall constitute polling districts for such polling places:
17. No election shall be questioned by reason of any polling district not having been constituted in conformity with the provisions of this act, or by reason of any informality relative to any polling district:
18. When any day fixed for taking the poll at any election is the day fixed for the holding of the petty sessions court at any polling place, the court shall stand *ipso facto* adjourned till the next day, which shall in that case be the legal day for holding said court, and if that day be a Sunday or legal holiday, till the next day:
19. The term "the lord lieutenant" in this section shall mean the lord lieutenant of Ireland and the lords justices or other chief governors or governor of Ireland for the time being, and the term "chairman of quarter sessions" in this section shall include any person duly appointed to do the duty of such chairman during his sickness or absence.
19. Where the name of any person is required to be inserted in any list of voters for any ward of any city, town, or borough under the provisions of section seven of the act passed in the session of parliament held in the thirteenth and fourteenth years of the reign of her present majesty, chapter sixty-eight, as qualified in respect of any property qualification, or as the occupier of any lands, tenements, or

Amendment
of law as to
voting in
wards in
certain
boroughs.

hereditaments situate in whole or in part beyond the limits of such ward, then and in every such case the names so required to be inserted shall be placed in alphabetical order in a separate part of such list to be styled "the list of rural or out voters of such ward," and the property, lands, tenements, and hereditaments in respect of which such person is qualified as aforesaid shall for the purposes of the said acts and the acts amending the same, in relation to the providing of booths and compartments within each ward of any city, town, or borough, and the voting therein of persons entitled to vote in respect of any such qualifications aforesaid, be deemed to constitute a separate ward: Provided always, that the name of any such person shall not be placed in such separate list if such person shall, in writing under his hand, object thereto, and if such objection is delivered to such clerk of the peace on or before the twenty-fifth day of August next preceding the making of such list under the provisions aforesaid, and in such case in relation to such person the provisions of this section shall not apply.

PART II.

MUNICIPAL ELECTIONS.

Application to municipal election of enactments relating to the poll at parliamentary elections.

20. The poll at every contested municipal election shall, so far as circumstances admit, be conducted in the manner in which the poll is by this act directed to be conducted at a contested parliamentary election, and, subject to the modifications expressed in the schedules annexed hereto, such provisions of this act and of the said schedules as relate to or are concerned with a poll at a parliamentary election shall apply to a poll at a contested municipal election: provided as follows:

1. The term "returning officer" shall mean the mayor or other officer who, under the law relating to municipal elections, presides at such elections:
2. The term "petition questioning the election or return" shall mean any proceeding in which a municipal election can be questioned:
3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll:
4. All expenses shall be defrayed in manner provided by law with respect to the expenses of a municipal election:
5. No return shall be made to the clerk of the crown in chancery:

6. Nothing in this act shall be deemed to authorise the appointment of any agents of a candidate in a municipal election, but if in the case of a municipal election any agent of a candidate is appointed, and a notice in writing of such appointment is given to the returning officer, the provisions of this act with respect to agents of candidates shall, so far as respects such agent, apply in the case of that election :

7. The provisions of this act with respect to—

- (a.) The voting of a returning officer ; and
- (b.) The use of a room for taking a poll ; and
- (c.) The right to vote of persons whose names are on the register of voters ;

shall not apply in the case of a municipal election.

A municipal election shall, except in so far as relates to the taking of the poll in the event of its being contested, be conducted in the manner in which it would have been conducted if this act had not passed.

21. Assessors shall not be elected in any ward of any municipal borough, and a municipal election need not be held before the assessors or their deputies, but may be held before the mayor, alderman, or other returning officer only. Abolition of ward assessors.

Application of Part of Act to Scotland.

22. This part of this act shall apply to Scotland subject to the following provisions :— Alterations for application of Part II. to Scotland.

1. The term “mayor” shall mean the provost or other chief magistrate of a municipal borough, as defined by this act :
2. All municipal elections shall be conducted in the same manner in all respects in which elections of councillors in the royal burghs contained in schedule C. to the act of the session of the third and fourth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to alter and amend the Laws for the Election of the Magistrates and Councillors of the Royal Burghs in Scotland,” are directed to be conducted by the acts in force at the time of the passing of this act as amended by this act ; and all such acts shall apply to such elections accordingly.

Application of Part of Act to Ireland.

23. This part of this act shall apply to Ireland, with the following modifications :— Alterations for application of Part II. to Ireland.

1. The term “mayor” shall include the chairman of commissioners, chairman of municipal commissioners, chairman of town commissioners, and chairman of township commissioners :

22 Vict. c.
35.

2. The provisions of The Municipal Corporation Act, 1859, following; that is to say, section five and section six, and section seven except so much thereof as relates to the form of nomination papers, and section eight except so much thereof as relates to assessors, shall extend and apply to every municipal borough in Ireland, and shall be substituted for any provisions in force in relation to the nomination at municipal elections: provided always, that the term "councillor" in these sections shall for the purposes of this section include alderman, commissioner, municipal commissioner, town commissioner, township commissioner, or assessor of any municipal borough.

PART III.

PERSONATION.

Definition
and punish-
ment of
personation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

A person shall for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot-paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the third schedule to this act, shall in England and Ireland respectively apply to personation under this act in the same

manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said acts.

The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

If, on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in parliament for such county or borough during the parliament then in existence.

25. Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence in respect of any person who voted at such election, or where any person retained or employed for reward by or on behalf of such candidate for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment, is proved on such trial to have voted at such election, there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to such candidate one vote for every person who voted at such election and is proved to have been so bribed, treated, or unduly influenced, or so retained or employed for reward as aforesaid.

Vote to be struck off for bribery, treating, or undue influence.

26. This part of this act shall apply to Scotland, subject to the following provision :—

Alterations in Act as applying to Scotland.

The offence of personation shall be deemed to be a crime and offence, and the rules of the law of Scotland with respect to apprehension, detention, precognition, commitment, and bail shall apply thereto, and any person accused thereof may be brought to trial in the court of justiciary, whether in Edinburgh or on circuit, at the instance of the lord advocate, or before the sheriff court, at the instance of the procurator fiscal.

27. This part of this act, so far as regards parliamentary election, shall be construed as one with The Parliamentary Elections Act, 1868, and shall apply to an election for a university or combination of universities.

Construction of part of Act.

PART IV.

MISCELLANEOUS.

Effect of
schedules.

28. The schedules to this act, and the notes thereto, and directions therein, shall be construed and have effect as part of this act.

Definitions.

“Municipal
borough:”

29. In this act--

The expression “municipal borough” means any place for the time being subject to the Municipal Corporation Acts, or any of them:

“Municipal
Corporation
Acts:”

The expression “Municipal Corporation Acts” means—

(a) As regards England, the act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, “An act to provide for the regulation of municipal corporations in England and Wales,” and the acts amending the same:

(b) As regards Scotland, the act of the session of the third and fourth years of the reign of King William the Fourth, chapter seventy-six, intituled “An act to alter and amend the laws for the election of magistrates and councillors of the royal burghs in Scotland,” and the act of the same session, chapter seventy-seven, intituled “An act to provide for the appointment and election of magistrates and councillors for the several burghs and towns of Scotland which now return or contribute to return members to parliament, and are not royal burghs,” and the act of the session of the thirteenth and fourteenth years of the reign of her present majesty, chapter thirty-three, intituled “An act to make more effectual provision for regulating the police of towns and populous places in Scotland, and for paving, draining, cleansing, lighting, and improving the same;” and The General Police and Improvement (Scotland) Act, 1862, and any acts amending the same:

(c) As regards Ireland, the act of the session of the third and fourth years of the reign of her present majesty, chapter one hundred and eight, intituled “An Act for the Regulation of Municipal Corporations in Ireland,” the act of the ninth year of George the Fourth, chapter eighty-two, The Towns Improvement (Ireland) Act, 1854, and every local and personal act providing for the election of commissioners in any towns or places for purposes similar to the purposes of the said acts.

The expression "municipal election" means—

"Municipal election."

- (a) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough: and
- (b) As regards Scotland, an election of any person to serve the office of councillor or commissioner of any municipal borough, or of a ward or district of any municipal borough:
- (c) As regards Ireland, an election of any person to serve the office of alderman, councillor, commissioner, municipal commissioner, town commissioner, township commissioner, or assessor of any municipal borough.

30. This act shall apply to any parliamentary or municipal election which may be held after the passing thereof. Application of Act.

31. Nothing in this act, except Part III. thereof, shall apply to any election for a university or combination of universities. Saving.

Repeal.

32. The acts specified in the fourth, fifth, and sixth schedules to this act, to the extent specified in the third column of those schedules, and all other enactments inconsistent with this act, are hereby repealed. Repeal of Acts in schedules.

Provided that this repeal shall not affect—

- (a) Anything duly done or suffered under any enactment hereby repealed; or
- (b) Any right or liability acquired, accrued, or incurred under any enactment hereby repealed; or
- (c) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (d) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this act had not passed.

33. This act may be cited as The Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless parliament shall otherwise determine; and on the said day the acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this act, but such proceeding shall be carried on as if this act had continued in force. Short title.

SCHEDULES.

FIRST SCHEDULE.

PART I.

RULES FOR PARLIAMENTARY ELECTIONS.

Election.

1. The returning officer shall, in the case of a county election, within two days after the day on which he receives the writ, and in the case of a borough election, on the day on which he receives the writ or the following day, give public notice, between the hours of nine in the morning and four in the afternoon, of the day on which and the place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election shall send one of such notices by post, under cover, to the postmaster of the principal post office of each polling place in the county, endorsed with the words "Notice of election," and the same shall be forwarded free of charge; and the postmaster receiving the same shall forthwith publish the same in the manner in which post-office notices are usually published.

2. The day of election shall be fixed by the returning officer as follows; that is to say, in the case of an election for a county or a district borough not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in the case of an election for any borough other than a district borough not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election.

3. The place of election shall be a convenient room situate in the town in which such election would have been held if this act had not passed, or where the election would not have been held in a town, then situate in such town in the county as the returning officer may from time to time determine as being in his opinion most convenient for the electors.

4. The time appointed for the election shall be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer shall attend during those two hours and for one hour after.

5. Each candidate shall be nominated by a separate nomination paper, but the same electors or any of them may subscribe as many nomination papers as there are vacancies to be filled, but no more.

6. Each candidate shall be described in the nomination paper in such manner as in the opinion of the returning officer is calculated to sufficiently identify such candidate; the description shall include his names, his abode, and his rank, profession, or calling, and his surname shall come first in the list of his names. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule, shall be allowed or deemed valid, unless such objection is made by the returning officer, or by some other person, at or immediately after the time of the delivery of the nomination paper.

7. The returning officer shall supply a form of nomination paper to any registered elector requiring the same during such two hours as the returning officer may fix, between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of the election was given and the day of election, and during the time appointed for the election; but nothing in this act shall render obligatory the use of a nomination paper supplied by the returning officer, so, however, that the paper be in the form prescribed by this act.

8. The nomination papers shall be delivered to the returning officer at the place of election during the time appointed for the election; and the candidate nominated by each nomination paper, and his proposer and seconder, and one other person selected by the candidate, and no person other than aforesaid, shall, except for the purpose of assisting the returning officer, be entitled to attend the proceedings during the time appointed for the election.

9. If the election is contested the returning officer shall, as soon as practicable after adjourning the election, give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers, and of the names of the persons who subscribe the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and, in the case of an election for a county, deliver to the postmaster of the principal post-office of the town in which is situate the place of election a paper, signed by himself, containing the names of the candidates nominated, and stating the day on which the poll is to be taken, and the postmaster shall forward the information contained in such paper by telegraph, free of charge, to the several postal telegraph offices situate in the county for which the election is to be held, and such information shall be published forthwith at each such office in the manner in which post-office notices are usually published.

10. If any candidate nominated during the time appointed for the election is withdrawn in pursuance of this act, the returning officer shall give public notice of the name of such candidate, and the names of the persons who subscribed the nomination paper of such candidate, as well as of the candidates who stood nominated or were elected.

11. The returning officer shall, on the nomination paper being delivered to him, forthwith publish notice of the name of the person nomi-

nated as a candidate, and of the names of his proposer and seconder, by placarding or causing to be placarded the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room is situate appointed for the election.

12. A person shall not be entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in manner provided by this act, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election shall be deemed to have been nominated in manner provided by this act, unless objection be made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election or within one hour afterwards.

13. The returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but if allowing the same, shall be subject to reversal on petition questioning the election or return.

The Poll.

14. The poll shall take place on such day as the returning officer may appoint, not being in the case of an election for a county or a district borough less than two or more than six clear days, and not being in the case of an election for a borough other than a district borough more than three clear days after the day fixed for the election.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such a manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the second schedule to this act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this act, or of any voter who makes such a declaration as herein-after mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this act called "the list of votes marked by the presiding officer."

The said declaration, in this act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling,

before the presiding officer, who shall attest it in the form herein-after mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this act called the tendered votes list.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals—

1. Each ballot box in use at his station, unopened but with the key attached ; and
2. The unused and spoilt ballot papers, placed together ; and
3. The tendered ballot papers ; and
4. The marked copies of the register of voters, and the counterfoils of the ballot papers ; and
5. The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads “physical incapacity,” “Jews,” and “unable to read,” and the declarations of inability to read ;

and shall deliver such packets to the returning officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the clerk of the crown in chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agent of the candidates, before such report is sent, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the clerk of the crown in chancery the result of such

verification, and shall, on request, allow any agent of the candidates, before such report is sent, to copy it.

38. Lastly, the returning officer shall forward to the clerk of the crown in chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactments shall be construed to include any document forwarded in pursuance of this rule.

39. The clerk of the crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this act by a returning officer, and then, unless otherwise directed by an order of the house of commons, or of one of her majesty's superior courts, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the clerk of the crown in chancery, except under the order of the house of commons or under the order of one of her majesty's superior courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the house or court making the same may think expedient, and shall be obeyed by the clerk of the crown in chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

41. No person shall, except by order of the house of commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the clerk of the crown in chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the house or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this act to the clerk of the crown in chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and

under such regulations as may be prescribed by the clerk of the crown in chancery, with the consent of the speaker of the house of commons, and the clerk of the crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the treasury.

43. Where an order is made for the production by the clerk of the crown in chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election ; and any endorsement appearing on any packet of ballot papers produced by such clerk of the crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

General Provisions.

44. The return of a member or members elected to serve in Parliament for any county or borough shall be made by a certificate of the names of such member or members under the hand of the returning officer endorsed on the writ of election for such county or borough, and such certificate shall have effect and be dealt with in like manner as the return under the existing law, and the returning officer may, if he think fit, deliver the writ with such certificate endorsed to the postmaster of the principal post-office of the place of election, or his deputy, and in that case he shall take a receipt from the postmaster or his deputy for the same ; and such postmaster or his deputy shall then forward the same by the first post, free of charge, under cover, to the clerk of the crown, with the words " Election Writ and Return " endorsed thereon.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorised by this act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to

things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have

in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this act, Sunday, Christmas day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above-mentioned.

57. In this act—

The expression “district borough” means the borough of Monmouth and any of the boroughs specified in schedule E. to the act of the session of the second and third years of the reign of King William the Fourth, chapter forty-five, intituled “An Act to amend the Representation of the People in England and Wales”; and

The expression “polling place” means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorised by law to be provided; and

The expression “agents of the candidates,” used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

Modifications in Application of Part One of Schedule to Scotland.

58. In Scotland, the place of election shall be a convenient room situate in the town in which the writ for the election would, if this act had not passed, have been proclaimed.

59. In Scotland, the candidates may respectively appoint agents to attend at the polling stations. The ballot papers and other documents other than the return required to be sent to and kept by the Clerk of the Crown in Chancery, shall, in Scotland, be kept by the sheriff clerks of the respective counties in which the returns (including those for burghs) are made, and the provisions of this schedule relating thereto shall be construed as if the sheriff clerk was substituted for Clerk of the Crown in Chancery.

60. In Scotland, the term “district borough” shall mean the combined burghs and towns specified in schedule E. of the act of the session of the second and third years of the reign of King William the Fourth, chapter sixty-five, c. 48. 31 & 32 Vict.

intituled "An Act to amend the Representation of the People in Scotland;" and in schedule A. of the representation of the People (Scotland) Act, 1868.

61. The provisions of the Act of the session of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland," in so far as they relate to the fixing and announcement of the day of election, the interval to elapse between the receipt of the writ and the day of election, the period of adjournment for taking the poll in the case of Orkney and Shetland, and of the district of burghs comprising Kirkwall, Wick, Dornoch, Dingwall, Tain, and Cromarty, and to the keeping open of the poll for two consecutive days in the case of Orkney and Shetland, shall remain in full force and effect, anything in this act or any other act of Parliament now in force notwithstanding; but nothing herein contained shall be construed to exclude Orkney and Shetland or Orkney or Shetland, or the said district of burghs, or any of the burghs in the said district, from any of the benefits and obligations of the other portions of this act.

Modifications in Application of Part One of Schedule to Ireland.

62. The expression "Clerk of the Crown in Chancery" in this schedule shall mean, as regards Ireland, "the Clerk of the Crown and Hanaper in Ireland."

63. A presiding officer at a polling station in a county in Ireland need not be a freeholder of the county.

PART II.

RULES FOR MUNICIPAL ELECTIONS.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

(a.) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(b.) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by

him among the records of the borough ; and the provisions of part one of the schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications ; namely,

(a.) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of her majesty's superior courts ; but an appeal from such county court may be had in like manner as in other cases in such county court ;

(b.) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of her majesty's principal secretaries of state ; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this act, shall be subject to the directions of the council of the borough ;

(c.) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

Modifications in application of Part II. of Schedule to Scotland.

65. In part two of this schedule as applying to Scotland—The expression “register of voters” means the register, list, or roll of persons entitled to vote in a municipal election made up according to the law for the time being in force.

The expression “county court” means the sheriff court.

The expression “town clerk” includes the clerk appointed by the commissioners of police under the act of the session of the thirteenth and fourteenth years of the reign of her present majesty, chapter thirty-three, intituled “an act to make more effectual provision for regulating the police of towns and populous places in Scotland, and for paving, draining, cleansing, lighting, and improving the same,” and of the General Police and Improvement (Scotland) Act, 1862.

Modifications in application of Part II. of Schedule to Ireland.

66. In part two of this schedule as applying to Ireland—
The expression “register of voters,” in addition to the meaning specified in such part, means, in relation to any municipal borough subject to the provisions of a local act requiring an annual revision of the lists of voters at municipal elections, the register of voters made in conformity with the said provisions of such local act, and in relation to municipal boroughs to which Part II. of the Local Government (Ireland) Act, 1871, applies, the list to be made under the provisions of section twenty-seven of the said act, and in relation to other municipal boroughs a list which the town clerk of every municipal borough is hereby authorised and directed to make, in like manner in every respect as if the provisions of the said section were applicable to and in force within such municipal borough.

The expression “county court” means the civil bill court.

The expression “town clerk” includes clerk to the commissioners, municipal commissioners, town commissioners, or township commissioners of any municipal borough, and any person executing the duties of such town clerk.

The expression “council of the borough” includes commissioners, municipal commissioners, and town commissioners of the town, and township commissioners of the township.

The expression “one of her majesty’s principal secretaries of state” means the chief secretary of the Lord Lieutenant of Ireland.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

* Victoria, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of the Faith,
to the † of the county [*or* borough] of
 , greeting:

* The name of the Sovereign may be altered when necessary.

† Insert
"sheriff" or
other
returning
officer.

† This preamble to be omitted except in case of a general election.

§ Except in a general election, insert here in the place of A.B., deceased, or otherwise, stating the cause of vacancy.

To the † of .

A writ of a new election of members [or member] for the
said county [or division of a county or borough, or as the
case may be].

Received the within writ on the day of
18 .

(Signed) A.B.,
High Sheriff [or Sheriff, or Mayor, or as the case may be].

I hereby certify, that the members [or member] elected for _____ in pursuance of the within-written writ, are [or is] *A.B.* of _____ in the county of _____ and *C.D.* of _____ in the county of _____.

(Signed) *A.B.*,

High Sheriff [or Sheriff, or Mayor, as the case may be].

Note.—A separate writ will be issued for each county as defined for the purposes of a parliamentary election.

Form of Notice of Parliamentary Election.

* *Note.*
Insert
description
of place and
room.

The returning officer of the _____ of _____
will, on the _____ day of _____ now next en-
suing, between the hours of _____ and _____, proceed to
the nomination, and, if there is no opposition, to the election,
of a member [*or members*] for the said county [*or division*
of a county *or borough*] at the *

Forms of nomination paper may be obtained at

*, between the hours of _____ and _____ on _____.

Every nomination paper must be signed by two registered electors as proposer and seconder, and by eight other registered electors as assenting to the nomination.

Every nomination paper must be delivered to the returning officer by the candidate proposed, or by his proposer and seconder, between the said hours of _____ and _____ on the said _____ day of _____ at the said _____*.

Each candidate nominated, and his proposer and seconder, and one other person selected by the candidate, and no other persons, are entitled to be admitted to the room.

In the event of the election being contested, the poll will take place on the _____ day of _____.

(Signed) *A.B.*,

Sheriff [*or Mayor, or as the case may be*].

day of _____ 18 _____.

Take notice, that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act, 1854," and the Ballot Act, 1872, and the acts amending the said acts.

Form of Nomination Paper in Parliamentary Election.

We, the undersigned *A.B.* of _____ in the _____
of _____ and *C.D.* of _____ in the _____ of _____,
being electors for the _____ of _____, do
hereby nominate the following person as a proper person to
serve as member for the said _____ in Parliament:

Surname.	Other names.	Abode.	Rank, Profession, or Occupation.
BROWN	JOHN . . .	52, George St., Bristol	Merchant.
JONES	<i>or</i> WILLIAM DAVID .	High Elms, Wilts	Esquire.
MERTON	<i>or</i> HON. GEORGE TRA- VIS, commonly called Viscount.	Swanworth, Berks	Viscount.
SMITH	<i>or</i> HENRY SYDNEY .	72 High St., Bath	Attorney.

(Signed) *A.B.*
C.D.

We, the undersigned, being registered electors of the ,
do hereby assent to the nomination of the above-mentioned
John Brown as a proper person to serve as member for the
said in parliament

(Signed) *E.F.* of
G.H. of
I.J. of
K.L. of
M.N. of
O.P. of
Q.R. of
S.T. of

Note.—Where a candidate is an Irish peer, or is commonly
known by some title, he may be described by his title as if it
were his surname.

Form of Nomination Paper in Municipal Election.

Note.—The form of nomination paper in a municipal
election shall as nearly as circumstances admit be the same
as in the case of a parliamentary election.

*Form of Ballot Paper.**Form of Front of Ballot Paper.**** NOTE.**

The counterfoil is to have a number to correspond with that on the back of the ballot paper.

1	BROWN (John Brown, of 52, George St., Bristol, merchant.)	
2	JONES (William David Jones, of High Elms., Wilts, Esq.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	

Form of back of Ballot Paper.

No.

Election for county [*or* borough, *or* ward].

18

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

Form of directions for the guidance of the voter in voting, which shall be printed in conspicuous characters, and placarded outside every polling station and in every compartment of every polling station.

The voter may vote for _____ candidate.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied with such inadvertence, give him another paper.

If the voter votes for more than _____ candidate, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of statutory declaration of secrecy.

I solemnly promise and declare, that I will not at this election for _____ do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of declaration of inability to read.

I, A.B., of _____, being numbered _____ on the register of voters for the county [or borough] of _____, do hereby declare that I am unable to read.

A.B., his mark.

day of _____

I, the undersigned, being the presiding officer for the polling station for the county [*or borough*] of _____, do hereby certify, that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
 Presiding officer for _____ polling station
 for the county [*or borough*] of _____
 day of _____

THIRD SCHEDULE.

Provisions of registration acts referred to in Part III. of the foregoing act.

Session and Chapter.	Title.	Part applied.
<i>As to England.</i>		
6 & 7 Vict. c. 18.	An Act to amend the law for the registration of persons entitled to vote, and to define certain rights of voting, and to regulate certain proceedings in the elections of members to serve in Parliament for England and Wales.	Sections eighty-five to eighty-nine, both inclusive.
<i>As to Ireland.</i>		
13 & 14 Vict. c. 69.	An Act to amend the laws which regulate the qualification and registration of parliamentary voters in Ireland, and to alter the law for rating immediate lessors of premises to the poor rate in certain boroughs.	Sections ninety-two to ninety-six, both inclusive.

FOURTH SCHEDULE.

Acts relating to England.

NOTE.—This schedule, so far as respects acts prior to the tenth year of the reign of George the Third, refers to the edition prepared under the direction of the Lord Chancellor, intituled “The Statutes, Revised Edition.”

A description or citation of a portion of an act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Portions of acts which have already been specifically repealed, are in some instances included in the repeal in this schedule, in order to preclude henceforth the necessity of looking back to previous acts.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
7 Hen. 4. . .	Statute of the seventh year.	Chapter fifteen.
8 Hen. 6. . .	Statutes of the eighth year of King Henry VI.	Chapter seven, from “and such as have the greatest number” to “shall lose their wages,” and from “and that in every writ that shall hereafter go forth” to the end of the chapter.
23 Hen. 6. . .	Here begin the statutes made at Westminster in the twenty-third year.	Chapter fourteen.
7 & 8 Will. 3. c. 25.	An Act for the further regulating elections of members to serve in Parliament, and for the preventing irregular proceedings of sheriffs and other officers in the electing and returning such members.	Sections three and four and section five down to “writing the same.”

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
(¹) 10 Will. 3. c. 7.	An Act for preventing irregular proceedings of sheriffs and other officers in making the returns of members chosen to serve in Parliament.	So much as is unrepealed.
2 Geo. 2. c. 24.	An Act for the more effectual preventing bribery and corruption in the elections of members to serve in Parliament.	Sections three and nine.
18 Geo. 2. c. 18	An Act to explain and amend the laws touching the elections of knights of the shire to serve in Parliament for that part of Great Britain called England.	Section five, from "or shall vote more than once" to the end of that section, and sections nine to sixteen.
19 Geo. 2. c. 28.	An Act for the better regulating of elections of members to serve in Parliament for such cities and towns in that part of Great Britain called England as are counties of themselves.	Section four, from, "or shall vote more than once," to end of that section, and sections six to twelve.
3 Geo. 3. c. 15.	An Act to prevent occasional freemen from voting at elections of members to serve in Parliament for cities and boroughs.	Section seven.

¹ (10 & 11 W. 3 in running headings in ordinary editions.)

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
11 Geo. 3. c. 55.	<i>An Act the title of which begins with the words "An Act to incapacitate," and ends with the words "New Shoreham, in the county of Essex."</i>	The whole act.
21 Geo. 3. c. 54.	An Act for the better regulating elections of citizens to serve in Parliament for the city of Coventry.	Sections seven to nine and fourteen.
22 Geo. 3. c. 31.	An Act for the preventing of bribery and corruption in the election of members to serve in Parliament for the borough of Cricklade in the county of Wilts.	The whole act.
25 Geo. 3. c. 84	<i>An Act the title of which begins with the words "An Act to limit the duration," and ends with the words "to serve in Parliament."</i>	The whole act, except section one down to "make a return of such person or persons," and section three in so far as that part of a section and section relate to the universities.
33 Geo. 3. c. 64	<i>An Act the title of which begins with the words "An Act to explain and amend an Act," and ends with the words "the time and place of election."</i>	The whole act, except so far as it relates to the universities.
34 Geo. 3. c. 73.	An Act for directing the appointment of Commissioners to	The whole act.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
42 Geo. 3. c. 62.	<p>administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in Parliament.</p> <p>An Act for extending the provisions of an act made in the thirty-fourth year of the reign of his present majesty, intituled "An Act for directing the appointment of Commissioners to administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in Parliament," to all oaths now required by law to be taken by voters at elections for members to serve in Parliament.</p>	The whole act.
43 Geo. 3. c. 74.	An Act for further regulating the administration of the oath or affirmation required to be taken by electors of members to serve in Parliament, by an act passed in the	The whole act.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
	second year of King George the Second, intituled "An Act for the more effectual preventing bribery and corruption in the election of members to serve in Parliament."	
44 Geo. 3. c. 60.	An Act for the preventing of bribery and corruption in the election of members to serve in Parliament for the borough of Aylesbury in the county of Buckingham.	The whole act.
11 Geo. 4. & 1 Will. 4. c. 74.	An Act to prevent bribery and corruption in the election of burgesses to serve in Parliament for the borough of East Retford.	The whole act.
2 & 3 Will. 4. c. 45.	An Act to amend the representation of the people in England and Wales.	Sections fifty-eight to sixty; sections sixty-two, sixty-three, sixty-five, sixty-seven; part of section sixty-eight, namely, from "shall if required thereby" down to "poll at each compartment, and," and from "and in case the booths shall be situated in different places" to "lawfully closed;" and section sixty-nine; and section

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
2 & 3 Will. 4. c. 64.	An Act to settle and describe the divisions of counties and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament.	<p>seventy-one from "and that all deputies" to "candidates at such election," and from "provided also, that the sheriff" to the end of the section; and sections seventy-two, seventy-three, and seventy-four.</p> <p>Sections twenty-nine to thirty-three, and so much of section thirty-four as relates to taking the poll.</p>
5 & 6 Will. 4. c. 36.	An Act to limit the time of taking the poll in boroughs at contested elections of members to serve in Parliament to one day.	The whole act, except section two, down to "in the forenoon," and from "and the polling" to "in the afternoon;" and sections seven to nine.
5 & 6 Will. 4. c. 76.	An Act to provide for the regulation of municipal corporations in England and Wales.	The words "openly assemble and" in section thirty; section thirty-two from "by delivering to the mayor and assessors" to the end of that section, and so much of the rest of that section as relates to assessors; section thirty-three from "and shall be so

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
		divided" to "poll at each compartment, and," and from "and in case the booths" to "at each place;" the words "Are you the person whose name is signed as A.B. to the voting paper now delivered in by you" in section thirty-four, and section thirty-five from "and the mayor shall cause the voting papers" to end of that section, and so much of the rest of that section as relates to assessors; and so much of sections forty-three, forty-four, and forty-six as relates to assessors.
6 & 7 Will. 4. c. 102.	An Act for rendering more easy the taking the poll at county elections.	The whole act.
6 & 7 Vict. c. 18.	An Act to amend the law for the registration of persons entitled to vote and to define certain rights of voting, and to regulate certain proceedings in the election of members to serve in Parliament for England and Wales.	Section seventy-nine from "Provided always, that it shall not be lawful" to end of that section; section eighty; so much of section eighty-one as relates to a commissioner or commissioners; sections eighty-three, eighty-four, and ninety-one, sections ninety-four to ninety-six, and sections ninety-eight and ninety-nine.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
16 & 17 Vict. c. 15.	An Act to limit the time of taking the poll in counties at contested elections for knights of the shire to serve in Parliament in England and Wales to one day.	The whole Act, except section two, down to "in the afternoon of such day," and section three.
16 & 17 Vict. c. 68.	An Act to limit the time for proceeding to election in counties and boroughs in England and Wales, and for polling at elections for the Universities of Oxford and Cambridge, and for other purposes.	Sections two, three, seven, and eight.
17 & 18 Vict. c. 102.	"The Corrupt Practices Prevention Act, 1854."	Section eleven and Schedule B.
22 Vict. c. 35. . .	"The Municipal Corporation Act, 1859."	So much of section seven as relates to the form of nomination paper, and so much of section eight as relates to assessors.
25 & 26 Vict. c. 95.	An Act to amend the law relating to polling places in the boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford.	The whole act.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
30 & 31 Vict. c. 102.	"The Representation of the People Act, 1867."	Section thirty-five; section thirty-seven from "where in any place" to end of that section; section thirty-nine.
31 & 32 Vict. c. 58.	"The Parliamentary Electors Registration Act, 1868."	Sections four to sixteen, twenty-four, twenty-six, thirty-four, and thirty-six.
31 & 32 Vict. c. 125.	"The Parliamentary Elections Act, 1868."	Section forty, from "provided always" to the end of that section.

FIFTH SCHEDULE.

Acts relating to Scotland.

A description or citation of a portion of an act is inclusive of the words section or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title of Act.	Extent of Repeal.
2 & 3 Will. 4. c. 65.	An Act to amend the representation of the people in Scotland.	Sections twenty-four and twenty-five; section twenty-six; section twenty-seven from the words "and each substitute so superintending" to the end of that section; section twenty-eight from the words

Session and Chapter.	Title of Act.	Extent of Repeal.
3 & 4 Will. 4. c. 76.	An Act to alter and amend the laws for the election of the magistrates and councils of the royal burghs in Scotland.	<p>“and shall within three days” to the end of that section; section twenty-nine the words “the market cross or some other convenient and open place in or immediately adjoining,” and from the words “and if no more than one candidate” to the end of that section; section thirty the words “the market-cross or some other convenient and open place in or immediately adjoining,” and from the words “and if no more candidates” down to the words “Saturdays and Sundays,” and from the words “and the sheriff who proclaimed the writ” to the end of that section; sections thirty-two, thirty-three, and thirty-nine; sections forty-three, forty-seven, and forty-eight.</p> <p>Section eight so far as it provides that the election shall be by “open” poll, and from the words “and each poll clerk shall enter” to the end of that section; section ten, so far as it relates to poll-books;</p>

Session and Chapter.	Title of Act.	Extent of Repeal.
3 & 4 Will. 4. c. 77.	An Act to provide for the appointment and election of magistrates and councilors for the several burghs and towns of Scotland which now return or contribute to return members to Parliament and are not royal burghs.	<p>section eleven, so far as it relates to voting by lists; and the words "assemble in the town hall or other public room of such burgh and," and from the words "and the provost" to the end of that section; section fifteen, so far as inconsistent with this act; section eighteen; section thirty-six from the commencement to "provided always, that;" and section thirty-eight.</p> <p>Section four so far as it provides that the election shall be by open poll; and from the words "and each poll clerk shall enter" to the end of that section; section eight and section nine from the words "assemble in the town hall" to the words "in each such burgh or town;" so much of the section as relates to voting by lists, and from the words "and such town clerk" to the end of that section; section eleven so far as inconsistent with this act; and sections eighteen and thirty-four.</p>

Session and Chapter.	Title of Act.	Extent of Repeal.
4 & 5 Will. 4. c. 86.	<i>An Act the title of which begins with the words "An Act to explain certain provisions," and ends with the words "to return members to Parliament, and are not royal burghs."</i>	The whole act.
4 & 5 Will. 4. c. 87.	<i>An Act the title of which begins with the words "An Act to explain certain provisions," and ends with the words "of the royal burghs of Scotland."</i>	The whole act.
4 & 5 Will. 4. c. 88.	An Act for the more effectual registration of persons entitled to vote in the election of members to serve in Parliament.	The whole act.
5 & 6 Will. 4. c. 78.	<i>An Act the title of which begins with the words "An Act to explain and amend an Act," and ends with the words "and to diminish the expenses thereof."</i>	Sections one and two; section five from "and after the poll" to "the declaration"; sections six, seven, eight, twelve, thirteen, and fifteen.
13 & 14 Vict. c. 33.	An Act to make more effectual provision for regulating the police of towns and populous places in Scotland, and for paving, draining, cleansing, lighting, and improving the same.	Sections seven to eleven and thirteen to twenty-six, sections twenty-nine and thirty, so far as their provisions are inconsistent with the provisions of this act, and schedules (A.), (B.), (C.).

Session and Chapter.	Title of Act.	Extent of Repeal.
16 & 17 Vict. c. 28.	An Act to amend the law as to taking the poll at elections of members to serve in Parliament for Scotland.	Sections one and ten.
18 & 19 Vict. c. 24.	<i>An Act the title of which begins with the words "An Act to amend an Act," and ends with the words "in county elections in that country."</i>	The whole act.
24 & 25 Vict. c. 83.	An Act to amend the law regarding the registration of county voters in Scotland.	Schedule (D.) annexed to the act from the words "and that I am possessed" to the end of the said schedule.
25 & 26 Vict. c. 101.	<i>An Act the title of which begins with the words "An Act to make more effectual provision for regulating the police," and ends with the words "and also for promoting the public health thereof."</i>	Sections forty-six, forty-seven, and fifty, so far as their provisions are inconsistent with the provisions of this act.
28 & 29 Vict. c. 92.	An Act to shorten the time for the election of members for the Ayr district of Burghs.	The whole act.

Session and Chapter.	Title.	Extent of Repeal.
31 & 32 Vict. c. 48.	An Act for the amendment of the representation of the people in Scotland.	Section twenty-four from the words "and in the case of a poll being demanded" to the words "the said sheriff of the county of Peebles;" and sections forty-four and fifty-four; and section fifty-nine from the words "oath of possession" to the end of that section.
31 & 32 Vict. c. 58.	<i>An Act the title of which begins with the words "An Act to amend the law of registration," and ends with the words "other purposes relating thereto."</i>	Section thirteen.

SIXTH SCHEDULE.

Acts relating to Ireland.

A description or citation of a portion of an act is inclusive of the words section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

ACTS OF THE PARLIAMENT OF IRELAND.

Session and Chapter.	Title.	Extent of Repeal.
10 Hen. 7. c. 22.	An Act confirming all the statutes made in England.	So much of the same as extends to Ireland the provisions of the

Session and Chapter.	Title of Act.	Extent of Repeal.
35 Geo. 3. c. 29.	An Act for regulating the election of members to serve in Parliament, and for repealing the several acts therein mentioned.	Acts of the Parliament of England following ; namely,— 7 Hen. 4. chapter fifteen, 8 Hen. 6. chapter seven, from “and such as have the greatest number” to “shall lose their wages,” and from “and that in every writ that shall hereafter go forth” to the end of the chapter, 23 Hen. 6. chapter fourteen. Section three, sections five to thirteen, sections fifteen to eighteen, section twenty.

ACTS OF THE PARLIAMENT OF THE UNITED KINGDOM.

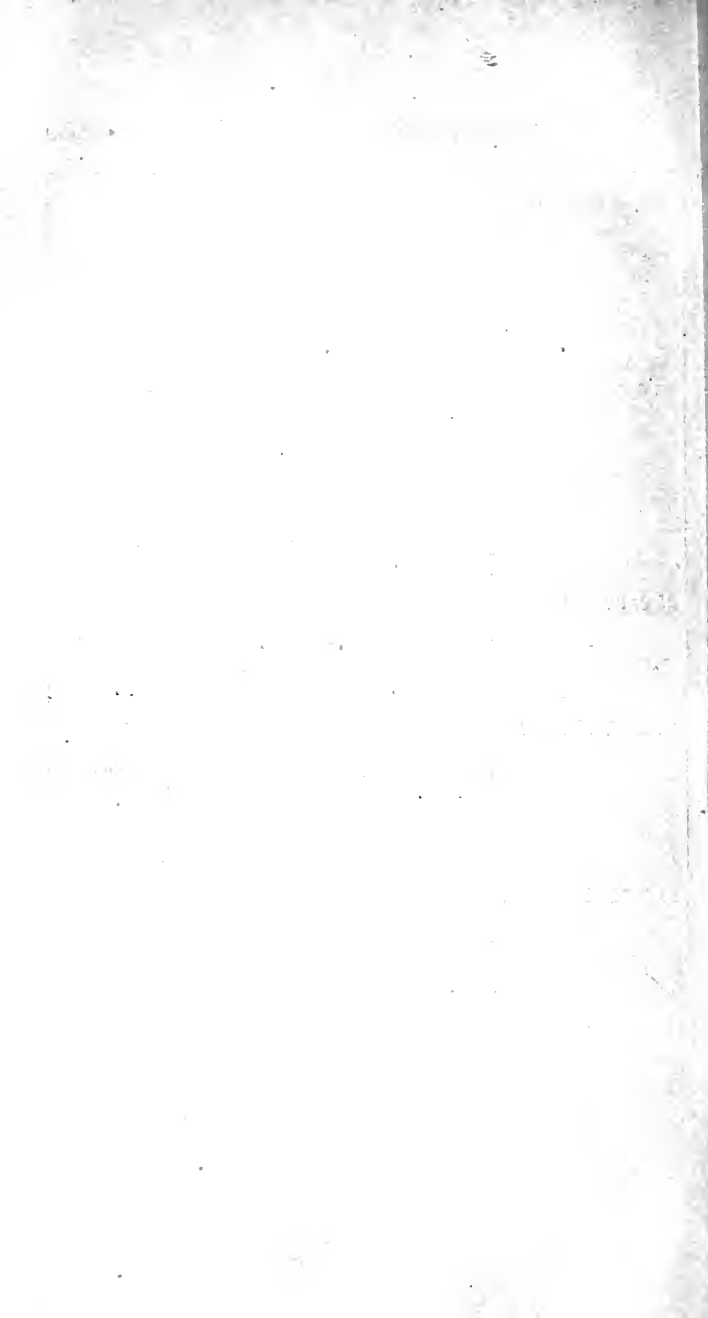
1 Geo. 4. c. 11.	An Act for the better regulation of polls, and for making further provision touching the election of members to serve in Parliament for Ireland.	Sections two and three, section five from the words “and that such sheriff” to the end of that section, sections six to twenty-one, section twenty-three, sections forty-one and forty-two.
9 Geo. 4. c. 82.	An Act to make provision for the lighting, cleansing, and watching of cities, towns, corporations, and market towns in Ireland in certain cases.	So much of sections twelve and sixteen as prescribes the mode of election of commissioners.

Session and Chapter.	Title.	Extent of Repeal.
4 Geo. 4. c. 55.	An Act to consolidate and amend the several acts now in force, so far as the same relate to the election and return of members to serve in Parliament for counties of cities and counties of towns in Ireland.	Section thirty-three from the words "and that such sheriffs" to the end of that section, sections thirty-four to forty-seven, sections forty-nine to fifty-nine, sections sixty to sixty-two, sections sixty-four and sixty-five, sections sixty-eight to seventy, seventy-two, seventy-six, and seventy-seven.
2 & 3. Will. 4. c. 88.	An Act to amend the representation of the people of Ireland.	Section thirty, section forty-eight, and sections forty-nine to fifty-four.
3 & 4 Vict. c. 108.	An Act for the regulation of municipal corporations in Ireland.	Section sixty-four from the words "by delivering to the mayor or barrister" to the end of that section, and so much of that section as relates to assessors; section sixty-five from "and shall be so divided" to "poll at each compartment," and from "in case the booths" to "at each place;" the words "are you the person whose name is signed as A. B. to the voting paper now delivered in by you," in section sixty-six; section sixty-eight from "and the mayor

Session and Chapter.	Title.	Extent of Repeal.
		shall cause the voting papers" to the end of that section, and so much of the rest of that section as relates to assessors; and so much of section seventy as relates to ward assessors.
6 & 7 Vict. c. 93.	An Act to amend an act of the third and fourth years of Her present Majesty for the regulation of municipal corporations in Ireland.	Section twenty-three.
9 & 10 Vict. c. 19.	An Act to amend an act of the second and third years of His late Majesty by providing additional booths or polling places at elections in Ireland where the number of electors whose names shall begin with the same letter of the alphabet shall exceed a certain number.	The whole act.
13 & 14 Vict. c. 68.	An Act to shorten the duration of elections in Ireland, and for establishing additional places for taking the poll thereat.	Section one, section three, section four, sections ten to fourteen, so much of section fifteen as prescribes the interval between the election and the polling, section sixteen, section nineteen from "and

Session and Chapter.	Title.	Extent of Repeal.
13 & 14 Vict. c. 69.	An Act to amend the laws which regulate the qualification and registration of parliamentary voters in Ireland, and to alter the law for rating immediate lessors of premises to the poor rate in certain boroughs.	that all the deputies" to "at the expense of the candidates," section twenty, section twenty-two. Sections eighty-six, ninety-eight; ninety-nine; section one hundred; sections one hundred and one and one hundred and two, sections one hundred and four and one hundred and five.
17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	Section eleven and Schedule B.
17 & 18 Vict. c. 103.	The Towns Improvement (Ireland) Act, 1854.	So much of section twenty-four as incorporates the sections of 10 & 11 Vict. c. 16. following; that is to say,—sections twenty-three, twenty-six, and twenty-seven; section twenty-eight from the words "and shall be conducted in manner following" to "carefully preserved by the presiding officer, and," and the question numbered I., section thirty from "the returning officer" to "each person and," and section thirty-

Session and Chapter.	Title.	Extent of Repeal.
25 & 26 Vict. c. 62.	An Act to amend the law relating to the duration of contested elections for counties in Ireland, and for establishing additional places for taking the poll thereat.	<p>one, and so much of any Act as incorporates the part of the said section twenty-four hereby repealed.</p> <p>Part of section four, namely, so much as prescribes the interval between the day fixed for the election and the polling; section five, sections eight to ten.</p>
25 & 26 Vict. c. 92.	An Act to limit the time for proceeding to elections in counties and boroughs in Ireland.	Section one, and section two from the words "and in every city or town" to the end of that section.
31 & 32 Vict. c. 49.	An Act to amend the representation of the people in Ireland.	Section twelve from the words "several boroughs" to the word "Cork," and the words "and county of the city of Limerick."
31 & 32 Vict. c. 112.	An Act to amend the law of registration in Ireland.	Sections four to thirty; section thirty-eight.



G.

35 & 36 VICTORIA.

CAP. LX.

An Act for the better prevention of Corrupt Practices at Municipal Elections, and for establishing a Tribunal for the trial of the validity of such Elections. [6th August, 1872.]

WHEREAS it is expedient to make provision for the better prevention of corrupt practices at municipal elections, and for establishing a tribunal for the trial of the validity of such elections :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

Preliminary.

1. This Act may be cited for all purposes as the "Corrupt Practices (Municipal Elections) Act, 1872." Short title.

2. In this Act, except where the context otherwise requires, the following words and expressions shall respectively be construed as follows, viz. : Definitions.

1. "Borough" means a place for the time being subject to the provisions of the Act of the fifth and sixth of William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," as amended "by the Acts amending the said Act :

"Office" means the office of mayor, alderman, councillor, auditor, or assessor, of a borough or ward of a borough :

"Election" means an election to an office :

"Candidate" means a person elected, or who has been nominated or has declared himself a candidate for election to an office :

"Canvasser" means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at an election, or to vote or to abstain from voting for any candidate at an election :

"Register" includes a burgess roll or ward list :

"Voter" means a person included in a register or who voted or claimed to vote at an election :

"Returning officer" means a person under whatever designation presiding at an election :

"Election court" means an election court constituted and acting under the provisions of this Act for the trial of a petition respecting an election :

"Superior court" means the Court of Common Pleas at Westminster :

"Prescribed" means prescribed by general rules to be made under the provisions of this Act.

2. This Act shall so far as is consistent with the tenor thereof be construed as one with the Acts for the time being in force relating to boroughs and to elections in boroughs.

PART I.

Corrupt Practices at Municipal Elections.

As to corrupt practices at municipal elections.

3. The offences of bribery, treating, undue influence, and personation, shall be deemed to be corrupt practices at an election for the purposes of this Act.

The terms "bribery," "treating," "undue influence," and "personation," shall respectively include anything committed or done before, at, after, or with respect to an election, which if done before, at, after, or with respect to an election of members to serve in Parliament would render the person committing or doing the same liable to any penalties, punishments, or disqualifications, for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to elections of members to serve in Parliament.

Any person who is guilty of a corrupt practice at an election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments, as if the corrupt practice had been committed at an election of members to serve in Parliament.

Disqualifications of candidates personally guilty of corrupt practices.

4. Where it is found by the report of an election court acting under the provisions of this Act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of corrupt practices at the election, and his election, if he has been elected, shall be void, and he shall (whether he was elected or not) during seven years from the date of the report be subject to the following disqualifications ; viz.,

1. He shall be incapable of holding or exercising any municipal office or franchise, and of having his name placed on the register, or voting at any municipal election :
2. He shall be incapable of acting as a justice of the peace and of holding any judicial office :

3. He shall be incapable of being elected to and of sitting or voting in Parliament :
4. He shall be incapable of being registered or voting as a parliamentary voter :
5. He shall be incapable of being employed by any candidate in any parliamentary or municipal election :
6. He shall be incapable of acting as overseer or as guardian of the poor.

If any person is upon an indictment or information found guilty of any corrupt practice at an election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for any corrupt practice at an election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

If at any time after any person has become disqualified by virtue of this Act, the witnesses, or any of them, on whose testimony such person has so become disqualified, are upon the prosecution of such person convicted of perjury in respect of such testimony, it shall be lawful for such person to move the superior court to order, and the superior court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

5. If it is found by an election court acting under the provisions of this Act, that a candidate has by an agent been guilty of any corrupt practice at an election, or that any act herein-after in this Act declared to be an offence against this Act has been committed at an election by a candidate or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any municipal office in the borough for which the election was held, and if he was elected his election shall be void.

Avoidance of election for corrupt practices by agents, and for offences against this Act.

6. An election for a borough or a ward thereof shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election for such borough or ward as would by the common law of Parliament avoid an election of members to serve in Parliament for a parliamentary borough.

Avoidance of election on the ground of general corruption, &c.

7. No person who is included in a register for a borough or ward thereof as a burgess or citizen shall be retained or employed for payment or reward by or on behalf of a candidate at an election for such borough or any ward thereof as a canvasser for the purposes of the election.

Prohibition of paid canvassers.

If any person is retained or employed by or on behalf of a candidate at an election in contravention of this prohibition, such person and also the candidate or other person by whom

he is retained or employed shall be deemed to be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding ten pounds.

An agent or canvasser who is retained or employed for payment or reward for any of the purposes of an election shall not vote at the election, and if he votes he shall be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding ten pounds.

Prohibition
of payment
for convey-
ance of
voters.

8. If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, such candidate or agent shall be deemed to be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding five pounds.

Prosecutions
for corrupt
practices.

9. The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for either of the corrupt practices of bribery, undue influence, or personation at an election, together with compensation for trouble and loss of time, shall, unless the court before which such person is prosecuted otherwise directs, be allowed, paid, and borne in the same manner in which they may be allowed, paid, and borne in cases of felony.

The clerk of the peace of the county in which a borough is situate, or in the case of a borough which is a county of a city or a county of a town or in which there is a clerk of the peace, the clerk of the peace of such county of a city or county of a town or borough, shall, if he is directed by an election court acting under the provisions of this Act to prosecute any person for either of the corrupt practices of bribery, undue influence, or personation at the election in respect of which the court acts, or to sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Act at such election, prosecute, sue, or proceed against such person accordingly.

Provisions
for striking
off votes.

10. The votes of persons in respect of whom any corrupt practice is proved to have been committed shall be struck off on a scrutiny.

Subject to the provisions of this section a register shall for all purposes be conclusive as to the right of the persons included therein to vote at an election for the purposes whereof such register is in force; but nothing in this section shall entitle any person to vote who is by any Act or law prohibited from voting at an election on the ground of any disqualification by office or disability, nor shall relieve any such person from any penalty, liability, or punishment to which he may by law be subject by reason of his voting at an election.

11. The provisions of the Acts for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election. As to alleged personation.

PART II.

Election Petitions.

12. The election of any person at an election for a borough or ward may be questioned by petition before an election court constituted as herein-after in this Act provided, and herein-after in this Act referred to as the "court," on the ground that the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation, or on the ground that the election of such person was avoided by corrupt practices or offences against this Act committed at the election, or on the ground that he was at the time of the election disqualified for election to the office for which the election was held, or on the ground that he was not duly elected by a majority of lawful votes. Municipal elections may be questioned by petition.

An election shall not, except in the manner provided by this Act, be questioned upon an information in the nature of a quo warranto or by or in any process or manner whatsoever for a matter for which it might be questioned under the provisions of this Act.

13. The following provisions shall have effect with reference to the presentation of a petition complaining of an undue election (herein-after in this Act referred to as a "petition") : Presentation of petition.

1. A petition may be presented either by four or more persons who voted or who had a right to vote at the election or by a person alleging himself to have been a candidate at the election ;

A petition shall be in the prescribed form and shall be signed by the petitioner or petitioners, and shall be presented to the superior court in the prescribed manner, and the prescribed officer shall send a copy thereof to the town clerk of the borough to which it relates, who shall forthwith publish it in the borough ;

The terms "petitioner" and respondent," as herein-after used in this Act, include respectively any one or more persons by whom a petition is presented, and any one or more persons against whose election a petition is presented :

2. A petition shall be presented within twenty-one days after the day on which the election was held, unless it complain of the election on the ground of corrupt practices, and specifically allege a payment of money

or other reward to have been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, in which case it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against such person has been previously presented or tried :

3. At the time of presenting a petition, or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent. The security shall be to the amount of five hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognizance entered into by not exceeding four sureties, or partly in one way and partly in the other :
4. Within five days after the presentation of a petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation and of the nature of the proposed security, and a copy of the petition ; and the respondent may within five days from the service of the notice object in writing to any security by way of recognizance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same. An objection to a recognizance shall be decided in the prescribed manner :
5. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time not exceeding five days, to remove such objection by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient ;

If on objection made the security is decided to be insufficient, and the objection is not removed in manner herein-before mentioned, no further proceedings shall be had on the petition ; but otherwise on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue :

6. Where a petition complains of the conduct of a returning officer, he shall be deemed to be a respondent :

7. The prescribed officer shall so soon as may be make out a list of all petitions under this Act presented to the superior court which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, herein-after referred to as the "Municipal Election List," open to the inspection in the prescribed manner of any person making application to inspect the same :
8. The petitions shall, so far as conveniently may be, be tried in the order in which they stand in such list :
9. Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent :
10. Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, all such petitions shall in the municipal election list be bracketed together as one petition, but such petitions shall stand in the list in the place where the last of such petitions would have stood if it had been the only petition relating to that election, unless the superior court otherwise directs.
14. An election court for the trial of petitions under this Act shall be constituted as follows :

Constitution
of election
court.

 1. A petition shall be tried by a barrister qualified and appointed as herein-after provided, without a jury :
 2. So soon as may be after a municipal election list is made out a copy thereof shall by the prescribed officer be transmitted to each of the judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868, and the said judges or any two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the petitions at issue, and shall assign the petitions to be tried by them respectively :
 3. No barrister shall be appointed or act for the purposes of this Act who is of less than fifteen years' standing, or who is a member of Parliament, or who holds any office or place of profit under the Crown, other than that of a recorder, and no barrister shall try a petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister :
 4. If a barrister to whom the trial of a petition is as-

signed, dies, or declines or becomes incapable to act, the said judges or any two of them may assign the trial to be conducted or continued by any other of the barristers appointed as aforesaid :

5. The court shall for the purposes of the trial of a petition have all the same powers and privileges which a judge may have on the trial of an election petition under the provisions of the Parliamentary Elections Act, 1868, with this modification, that any fine or order of committal by the court may upon motion by the person aggrieved be discharged or varied by the superior court, or in vacation by a judge thereof, upon such terms, if any, as such superior court or judge thinks fit.

Trial of a
petition.

15. The following provisions shall have effect with respect to the trial of a petition :

1. A petition shall be tried in open court, and notice of the time and place at which the petition will be tried shall be given not less than seven days before the day on which the trial is held, in the prescribed manner :
2. A petition shall be tried within the borough to which it relates ; provided that, if it appear to the superior court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough, it shall be lawful for the superior court to appoint such other place for the trial as appears most convenient :
3. The court may adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held, as may seem expedient :
4. At the conclusion of the trial the court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the superior court, and upon the certificate being given the determination shall be final to all intents and purposes as to the matters at issue on the petition :
5. Where any charge is made in a petition of any corrupt practice or offence against this Act having been committed at the election to which the petition refers, the court shall, in addition to the certificate, and at the same time, report in writing to the superior court as follows :

(a.) Whether any corrupt practice or offence against this Act has or has not been proved to have been committed by or with the knowledge and con-

sent of any candidate at the election, and the nature of such corrupt practice or offence against this Act;

(b.) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice or offence under this Act;

(c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have extensively prevailed at the election to which the petition relates, in the borough or in any ward thereof;

The court may at the same time make a special report to the superior court as to any matters arising in the course of the trial, an account of which, in the judgment of the court, ought to be submitted to the superior court:

6. Where, upon the application of any party to a petition made in the prescribed manner to the superior court, it appears to that court that the case raised by the petition can be conveniently stated as a special case, that court may direct the same to be stated accordingly, and any such special case shall be heard before the superior court, and the decision of the superior court shall be final:
7. If it appear to the court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the superior court, the court may postpone the granting of a certificate until such question has been determined by the superior court, and for this purpose may reserve any such question, in like manner in which questions may be reserved by a judge on a trial at nisi prius:
8. On the trial of a petition, unless the court otherwise directs, any charge of a corrupt practice or offence against this Act may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of such corrupt practice or offence:
9. On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that such person was not duly elected, in the same manner as if he had presented a petition against the election of such person:
10. The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition:

APPENDIX.

11. A copy of any certificate or report made to the superior court upon the trial of a petition or a statement of any decision made by the superior court shall by the superior court be transmitted to one of Her Majesty's Principal Secretaries of State :
12. A copy of any certificate made by the court to the superior court, or in the case of a decision by the superior court upon a special case a statement of such decision shall be certified by the superior court, under the hands of two or more judges of the superior court, to the town clerk of the borough to which the petition relates.
- Provisions as to witnesses. to 16. The following provisions shall have effect with respect to witnesses at the trial of a petition :
 1. Witnesses shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury :
 2. On the trial of a petition the court may, by order in writing, compel the attendance of any person as a witness who appears to the court to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The election court may examine any witness so compelled to attend, or any person in court although such witness is not called and examined by any party to the petition. After the examination of a witness by the election court such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them :
 3. The provisions of the seventh section of the Act of the twenty-sixth and twenty-seventh of Her Majesty, chapter twenty-nine, relating to the examination and indemnity of witnesses, shall apply to any witness appearing before the court on the trial of a petition under this act, and the certificate shall be given by the court ; provided always, that the giving or refusal to give such certificate by the court shall be final and conclusive, and shall not be questioned by any proceeding or in any court whatsoever :
 4. The reasonable expenses incurred by any person in appearing to give evidence at the trial of a petition according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate of the court or of the prescribed officer, and such expenses, if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition.

17. The following provisions shall have effect with respect to the withdrawal and abatement of petitions: Withdrawal and abatement of petitions.

1. A petition shall not be withdrawn without the leave of the court or superior court upon special application, to be made in and at the prescribed manner, time, and place;

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the borough to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition:

2. On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition:

The court or superior court may, if it think fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the court or superior court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner:

3. If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution:

4. Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities, as the original petitioner; If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent;

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners:

5. A petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners;

The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred;

On the abatement of a petition the prescribed notice of

such abatement having taken place shall be given in the borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court in and at the prescribed manner, time, and place, to be substituted as a petitioner ;

The court or superior court may, if it think fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

Withdrawal
and substi-
tution of
respondents.

18. The following provisions shall have effect with respect to the withdrawal and substitution of respondents upon a petition :

1. If before the trial of a petition either of the following events happens in the case of a respondent other than a returning officer ; viz.,

(a.) If he dies, resigns, or otherwise ceases to hold the office to which the petition relates ; or

(b.) If he gives the prescribed notice that he does not intend to oppose the petition ;

Notice of such event having taken place shall be given in the borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court to be admitted as a respondent to oppose the petition, and such person shall be admitted accordingly, and any number of persons not exceeding three may be so admitted :

2. A respondent who has given the prescribed notice that he does not intend to oppose the petition, shall not be allowed to appear or act as a party against such petition in any proceedings thereon.

Costs on
petitions.

19. The following provisions shall have effect with respect to costs on the trial of a petition :

1. All costs, charges, and expenses of and incidental to the presentation of a petition, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court by which the petition is tried may determine ; and in particular any costs, charges, or expenses which in the opinion of the court by which

the petition is tried have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether such parties are or not on the whole successful :

2. The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed :

3. If any petitioner neglect or refuse for the space of three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the superior court, every person who has entered into a recognizance relating to such petition under the provisions of this Act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in the same manner as a forfeited recognizance under the provisions of the Parliamentary Elections Act, 1868.

20. The following provisions shall have effect with reference to the reception of the court upon the trial of a petition :

Reception of and attendance on the court.

1. The town clerk of a borough in respect of which a petition is to be tried shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid by the treasurer of the borough out of the borough fund or rate :
2. All superintendents of police, chief constables, head-boroughs, gaolers, constables, and bailiffs, shall give their assistance to the court in the execution of the duties of the said court, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of the provisions of this Act he shall incur a penalty not exceeding five pounds for every day during which such default continues :

3. The court may employ such officers and clerks as may

be allowed by general rules to be made under the provisions of this Act :

4. A shorthand writer shall attend at the trial of a petition, and shall be sworn by the court faithfully and truly to take down the evidence given at the trial, and shall take down the evidence at length, and a copy of the evidence so taken shall accompany the certificate of the said court, and the expenses of the shorthand writer, according to a scale to be prescribed, shall be deemed to be part of the expenses incurred in receiving the court.

Jurisdiction
and general
rules.

21. The following provisions shall have effect with respect to jurisdiction, and to general rules :

1. The judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868, may from time to time make, revoke, and alter general rules for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure and costs of petitions, and the trial thereof, and the certifying and reporting thereon ;

Any general rules made as aforesaid shall, in so far as they are not inconsistent with any of the provisions of this Act, be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act ;

Any general rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament :

2. Until general rules have been made in pursuance of this Act, and so far as such rules (when made), and the provisions of this Act, do not extend, the principles, practice, and rules which are for the time being observed in the case of election petitions under the provisions of the Parliamentary Elections Act, 1868, shall be observed so far as may be by the court and superior court in the case of petitions under this Act :
3. The duties to be performed by the prescribed officer under this Act shall be performed by the prescribed officer of the superior court :
4. The rules and principles with regard to agency and evidence, and with regard to a scrutiny, and with regard to the declaring any person to be elected in the room of any other person who is declared to have been not duly elected, which are applicable in the

case of Parliamentary election petitions shall be applied so far as they are applicable in the case of a petition under this Act :

5. The superior court shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if the petition were an ordinary cause within its jurisdiction.

Miscellaneous Provisions.

22. The remuneration and allowances to be paid to a barrister for his services in respect of the trial of a petition, and to any officers, clerks, or shorthand writers employed under the provisions of this Act, shall be fixed by a scale which shall be made and may be varied from time to time by the election judges on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868, with the approval of the Commissioners of Her Majesty's Treasury, or any two or more of them, and the amount of any such remuneration and allowances shall be paid by the said commissioners, and shall be repaid to the said commissioners on their certificate, by the treasurer of the borough to which the petition relates, out of the borough fund or rate :

Expenses of
the court.

Provided that the court at its discretion may order that the whole or any part of such remuneration and allowances, or the whole or any part of the expenses incurred by a town clerk for receiving the court under the provisions of this Act, shall be repaid to the said commissioners or to the town clerk, as the case may be, in the cases, by the persons, in the manner following ; viz.,

- (a.) When in the opinion of the court a petition is frivolous and vexatious, then by the petitioner ;
- (b.) When in the opinion of the court a respondent has been personally guilty of corrupt practices at the election, then by such respondent :

And any order so made for the repayment of any sum by a petitioner or respondent may be enforced in the same way as an order for payment of costs ; but any other costs or expenses payable by such petitioner or respondent to any party to the petition shall be satisfied out of any deposit or security made or given under the provisions of this Act before such deposit or security is applied for the repayment of any sum under an order made in pursuance of this section.

23. Where a candidate who has been elected to an office at an election is by a certificate of the court, or by a decision of the superior court, declared not to have been duly elected, acts done by him in execution of such office before the time

Acts done
pending a
petition not
to be invalidated.

when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of his being so declared not to have been duly elected.

Provisions as to elections in the room of persons unseated on petition.

24. Where upon a petition the election of any person to an office has been declared void, and no other person has been declared elected in his room, a new election shall forthwith be held to supply the vacancy in the same manner as in the case of an extraordinary vacancy in the office; and for the purposes of any such new election any duties to be performed by a mayor, alderman, or any officer, shall, if such mayor, alderman, or officer has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

Computation of time.

25. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving shall be excluded.

Prohibition of disclosure of vote.

26. No person who has voted at an election by ballot shall in any proceeding to question the election be required to state for whom he has voted.

Act not to apply to Scotland.

27. This Act shall not apply to Scotland.

Application of Act as herein named to Ireland.

28. This Act shall apply to Ireland; provided as follows:

1. "The superior court" means the Court of Common Pleas at Dublin:
2. "Borough" means a place for the time being subject to the provisions of the Act of the third and fourth of Her Majesty, chapter one hundred and eight, intituled "An Act for the regulation of Municipal Corporations in Ireland," the Act of the ninth of George the Fourth, chapter eighty-two, the Towns Improvement (Ireland) Act, 1854, or of any local and personal act providing for the election of commissioners in any towns or places for purposes similar to the purposes of the said acts:
3. "Office" means either of the offices of mayor, alderman, councillor, commissioner, municipal commissioner, town commissioner, township commissioner, or assessor, of any borough:
4. "Town clerk" includes a clerk to commissioners:
5. "Borough rate or fund" includes any rate, fund, or assessment out of which the expenses of any election to an office in a borough may be defrayed:
6. "County court" means a civil bill court:
7. "Register" has the same meaning as the term "Register of Voters" in Part II. of the First Schedule to the Ballot Act, 1872, as applied to Ireland:
8. "One of Her Majesty's Principal Secretaries of State".

shall be construed to mean the Chief Secretary to the Lord Lieutenant of Ireland for the time being:

9. Petitions questioning the election of any person to any office at an election for a borough or ward on the grounds set forth in section 12 of this Act may be presented to the court as defined by the Local Government (Ireland) Act, 1871, and the same shall be presented and tried in the manner and subject to the provisions of the said Act relating to controverted elections as the same are modified by this Act; and the terms "election court" or "court" and "prescribed" in this Act shall be construed to have the same meanings respectively as the terms "court" and "prescribed" in the said Act:
10. Where under the provisions of this Act any general rules may be made, the same shall be made by the court in the manner and subject to the provisions of section 21 of the Local Government (Ireland) Act, 1871:
11. Sections 13 and 14, sub-sections 1, 2, and 3 of section 15, and sub-sections 1 and 2 of section 20, shall not extend or apply to Ireland.

29. The Acts mentioned in the Schedule to this Act are repealed to the extent therein mentioned; but such repeal shall not affect the validity or invalidity of anything already done or suffered, or any offence already committed, or any remedy or proceeding in respect thereof, or the proof of any past act or thing.

Repeal of
Acts as in
Schedule.

SCHEDULE.

ACTS REPEALED.

- 5 & 6 Will. 4. c. 76. ss. 54 to 56, both inclusive.
- 22 Vict. c. 35. ss. 9 to 14, both inclusive.
- 3 & 4 Vict. c. 108, ss. 90, 91.

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H.

MICHAELMAS TERM, 1868.

GENERAL RULES.

MADE BY

SIR SAMUEL MARTIN, KNIGHT, one of the BARONS of the EXCHEQUER; SIR JAMES SHAW WILLES, KNIGHT, one of the JUSTICES of the COMMON PLEAS; and SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH; the JUDGES for the time being for the trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act, 1868.

I.

The presentation of an election petition shall be made by leaving it at the office of the master nominated by the Chief Justice of the Common Pleas, and such master or his clerk shall (if required) give a receipt, which may be in the following form:—

Received on the day of at the master's office a petition touching the election of A. B., a member for purporting to be signed by (*insert the names of Petitioners*).

C. D., *Master's Clerk.*

With the petition shall also be left a copy thereof for the master to send to the returning officer, pursuant to section 7 of the act.

II.

An election petition shall contain the following statements:—

1. It shall state the right of the petitioner to petition within section 5 of the act.

2. It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III.

The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the court or a judge.

IV.

The petition shall conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

V.

The following form, or one to the like effect, shall be sufficient:—
In the Common Pleas.

“The Parliamentary Elections Act, 1868.”

Election for [*state the place*] holden on the day of A.D.

The petition of A. of [*or of A. of and B. of*
as the case may be] whose names are subscribed.

1. Your petitioner^(s) A. is a person who voted [*or had a right to vote as the case may be*] at the above election [*or claims to have had a right to be returned at the above election, or was a candidate at the above election*]; and your petitioner B. [*here state in like manner the right of each petitioner.*]

2. And your petitioners state that the election was holden on the day of A.D. when A. B., C. D. and E. F. were candidates, and the returning officer has returned A. B. and C. D. as being duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely.*]

Wherefore your petitioners pray that it may be determined that the said A. B. was not duly elected or returned, and that the election was void [*or that the said E. F. was duly elected and ought to have been returned, or as the case may be.*]

(Signed) A.
 B.

VI.

Evidence need not be stated in the petition, but the court or a judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered.

VII.

When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return, shall, six days before the day appointed for trial, deliver to the master and also to the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the court or judge upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.

VIII.

When the respondent in a petition under the act, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the fifty-third section of the act, such respondent shall six days before the day appointed for trial deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court or judge, upon such terms as to amendments of the list, postponement of the inquiry and payment of costs, as may be ordered.

IX.

With the petition, petitioners shall leave at the office of the master a writing signed by them or on their behalf, giving the name of some person entitled to practise as an attorney or agent in cases of election petitions whom they authorise to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognizances and all other notices and proceedings may be given by sticking up the same at the master's office.

X.

Any person returned as a member may at any time after he is returned send or leave at the office of the master a writing signed by him or on his behalf, appointing a person entitled to practise as an attorney or agent in cases of election petitions, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office, at which notices may be left, and in

default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

XI.

The master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII.

The master shall upon the presentation of the petition forthwith send a copy of the petition to the returning officer, pursuant to section 7 of the act, and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the returning officer shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the returning officer, shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

XIII.

The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

XIV.

Where the respondent has named an agent or given an address, the service of an election petition may be by delivery of it to the agent or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent unless a judge on an application made to him not later than five days after the petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, including, when practicable, service upon an agent for election expenses, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

XV.

In case of evasion of service, the sticking up a notice in the office of the master of the petition having been presented stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service, if so ordered by a judge.

XVI.

The deposit of money by way of security for payment of costs, charges and expenses payable by the petitioner, shall be made by payment into the bank of England to an account to be opened there by the description of "The Parliamentary Elections Act, 1868, Security Fund," which shall be vested in and drawn upon from time to time by the chief justice of the common pleas for the time being, for the purposes for which security is required by the said act, and a bank-receipt or certificate for the same shall be forthwith left at the master's office.

XVII.

The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

XVIII.

The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

XIX.

The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the day of in the year of our Lord 18 , before me [*name and description*] came A. B., of [*name and description as above prescribed*] and acknowledged himself [*or severally acknowledged themselves*] to owe to our sovereign lady the queen the sum of one thousand pounds [*or the following sums*] (that is to say) the said C. D., the sum of £ , the said E. F., the sum of £ , the said G. H., the sum of £ , and the said J. K., the sum of £ to be levied on his [*or their respective*] goods and chattels, land and tenements, to the use of our said sovereign lady the queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one, add, or any of them*] shall well and truly pay all costs, charges and expenses, in respect of the election petition signed by him, [*or them*], relating to the [*here insert the name of the borough, or county*] which shall become payable by the said petitioner [*or petitioners, or any of them*] under the Parliamentary Elections Act, 1868, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

(Signed)

[*Signatures of sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the day of at , before me,

C. D.

A justice of the peace [*or as the case may be*].

XX.

The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

XXI.

The time for giving notice of any objection to a recognizance under the 8th section of the act shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

XXII.

An objection to the recognizance must state the ground or grounds thereof, as that the sureties or any, and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIII.

Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXIV.

Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

XXV.

If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 9th section of the said act, and the petition shall be at issue.

XXVI.

If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXVII.

The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

XXVIII.

The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and

a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the Court of Common Pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:—

In the Common Pleas.

“Parliamentary Elections Act, 1868.”

I, A. B. of [*as in recognizance*], make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts of the clear value of £

Sworn, &c.

XXIX.

The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the Court of Common Pleas, and enforced in like manner as a judge's order.

XXX.

The master shall make out the election list. In it he shall insert the name of the agents of the petitioners and respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said act, and headed “Parliamentary Elections Act, 1868.”

XXXI.

The time and place of the trial of each election petition shall be fixed by the judges on the rota, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by the post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the sheriff, or in case of a borough having a mayor, to the mayor of that borough, fifteen days before the day appointed for the trial.

The sheriff or mayor, as the case may be, shall forthwith publish the same in the county or borough.

XXXII.

The sticking up of the notice of trial at the office of the master shall be deemed and taken to be notice in the prescribed manner within the meaning of the act, and such notice shall not be vitiated by any mis-carriage of, or relating to, the copy or copies thereof to be sent as already directed.

XXXIII.

The notice of trial may be in the following form:—

“Parliamentary Elections Act, 1868.”

Election petition of county [or borough] of
Take notice, that the above petition [or petitions] will be tried
at on the day of and on such other subsequent days
as may be needful.

Dated the day of .

By order,
(Signed) A. B.,
The master appointed under the above act.

XXXIV.

A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the sheriff or mayor, as the case may be, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the sheriff or mayor.

XXXV.

In the event of the judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

XXXVI.

No formal adjournment of the court for the trial of an election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another judge.

XXXVII.

The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a judge at chambers, upon hearing the parties.

XXXVIII.

The title of the court of record held for the trial of an election petition may be as follows:—

Court for the trial of an election petition for the [county
of or borough of as may be] between petitioner and
respondent.

And it shall be sufficient so to entitle all proceedings in that court.

XXXIX.

An officer shall be appointed for each court for the trial of an election petition, who shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He by himself, or in case of need his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

XL.

The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand.

XLI.

The order of a judge to compel the attendance of a person as a witness may be in the following form :—

Court for the trial of an election petition for [*complete the title of the court*] the day of To A. B. [*describe the person*] You are hereby required to attend before the above court at [*place*] on the day of at the hour of [*or forthwith, as the case may be*] to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand,

A. B.

Judge of the said court.

XLII.

In the event of its being necessary to commit any person for contempt, the warrant may be as follows :—

At a court holden on at for the trial of an election petition for the county [*or borough*] of , before Sir Samuel Martin, knight, one of the barons of her majesty's court of exchequer, and one of the judges for the time being for the trial of election petitions in England, pursuant to "The Parliamentary Elections Act, 1868."

Whereas A. B. has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said A. B. for his said contempt to be imprisoned in the gaol for calendar months, and to pay to our lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid. And the court further orders that the sheriff of the said county [*or as the case may be*] and all constables and officers of the peace of any county or place where the said A. B. may be found, shall take the said A. B. into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence. And the court further orders the

said gaoler to receive the said A. B. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A. D.

Signed the day of

S. M.

XLIII.

Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

XLIV.

All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under "The Parliamentary Elections Act, 1868," as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of by one of the judges upon the rota, if practicable, and if not, then by any judge at chambers.

XLV.

Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Parliamentary Elections Act, 1868.

County [*or borough*] ofPetition of. [*state petitioners*], presented day
of .

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application. Dated this day of .
(Signed)

XLVI.

The notice of application for leave to withdraw shall be left at the master's office.

XLVII.

A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the returning officer, who shall make it public in the county or borough to which it relates, and shall be forthwith pub-

lished by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice:—

“Parliamentary Elections Act, 1868.”

In the election petition for _____ in which _____ is petitioner and respondent.

Notice is hereby given that the above petitioner has on the _____ day of _____ lodged at the master's office, notice of an application to withdraw the petition, of which notice the following is a copy—(*set it out.*)

And take notice that, by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

XLVIII.

Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the master, of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application if in fact made at the hearing.

XLIX.

The time and place for hearing the application shall be fixed by a judge, and whether before the court of common pleas, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

L.

Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 37 of the said act, shall be given by the party or person interested in the same manner as notice of an application to withdraw a petition; and the time within which application may be made to the court or a judge, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances, the court or a judge may allow.

LI.

If the respondent dies or is summoned to parliament as a peer of Great Britain by a writ issued under the great seal of Great Britain, or

if the house of commons have resolved that his seat is vacant, any person entitled to be a petitioner under the act in respect of the election to which the petition relates, may give notice of the fact in the county or borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the returning officer, and a like copy with the master.

LII.

The manner and time of the respondent's giving notice to the court that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the master signed by the respondent six days before the day appointed for trial, exclusive of the day of leaving such notice.

LIII.

Upon such notice being left at the master's office, the master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the sheriff or mayor, as the case may be, who shall cause the same to be published in the county or borough.

LIV.

The time for applying to be admitted as a respondent in either of the events mentioned in the 38th section of the act shall be within ten days after such notice is given as herein-before directed, or such further time as the court or a judge may allow.

LV.

Costs shall be taxed by the master, or at his request, by any master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way, and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the common pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the act, and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the court of common pleas.

LVI.

The master shall prepare and keep a roll properly headed for entering the names of all persons entitled to practise as attorney or agent in cases of election petitions, and all matters relating to elections before the court and judges, pursuant to the 57th section of the said act; which roll shall be kept and dealt with in all respects as the roll of attorneys of the court of common pleas, and shall be under the control of that court, as to striking off the roll and otherwise.

LVII.

The entry upon the roll shall be written and subscribed by the attorney or agent, or some attorney authorised by him in writing to sign on his behalf, who shall therein set forth the name, description and address in full.

LVIII.

The master may allow any person upon the roll of attorneys for the time being, and during the present year any person whose name, or the name of whose firm is in the Law List of the present year as a parliamentary agent to subscribe the roll, and permission to subscribe the roll may be granted to any other person by the court or judge upon affidavit, showing the facts which entitle the applicant to practise as agent according to the principles, practice and rules of the house of commons in cases of election petitions.

LIX.

An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

LX.

No proceeding under "The Parliamentary Elections Act, 1868," shall be defeated by any formal objection.

LXI.

Any rule made or to be made in pursuance of the act, if made in Term time, shall be published by being read by the master in the court of common pleas, and if made out of Term, by a copy thereof being put up at the master's office.

Dated the 21st day of November, 1868.

SAMUEL MARTIN.	×
J. S. WILLES.	×
COLIN BLACKBURN.	×

The Judges for the trial of Election Petitions in England.

Read in open court, Common Pleas,
the 23rd day of November, 1868.

I.

ADDITIONAL GENERAL RULE

MADE BY

SIR SAMUEL MARTIN, KNIGHT, one of the BARONS of the EXCHEQUER; SIR JAMES SHAW WILLES, KNIGHT, one of the JUSTICES of the COMMON PLEAS, and SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH; the JUDGES for the time being for the trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act, 1868.

That notice of the time and place of the trial of each election petition shall be transmitted by the master to the treasury, and to the clerk of the crown in chancery, and that the clerk of the crown in chancery shall, on or before the day fixed for the trial, deliver or cause to be delivered to the registrar of the judge who is to try the petition, or his deputy, the poll-books, for which the registrar or his deputy shall give, if required, a receipt. And that the registrar shall keep in safe custody the said poll-books until the trial is over, and then return the same to the crown office.

SAMUEL MARTIN.
J. S. WILLES.
COLIN BLACKBURN.

Dated the 19th day of December, 1868.

K.

ADDITIONAL GENERAL RULES

MADE BY

The JUDGES FOR THE TIME BEING for the Trial of ELECTION PETITIONS in ENGLAND pursuant to "THE PARLIAMENTARY ELECTIONS Act, 1868."

I.

All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges and expenses payable by the Petitioners pursuant to the 16th General Rule, made the 21st of November, 1868, by the Judges for the trial of Election Petitions in England, shall be disposed of by the Court of Common Pleas or a Judge.

II.

Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges and expenses be returned or otherwise disposed of as justice may require, by rule of the Court of Common Pleas or order of a Judge.

III.

Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Court or Judge may require.

IV.

The rule or order may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

V.

Upon such rule or order being made, the amount may be drawn for by the Chief Justice of the Common Pleas for the time being.

VI.

The draft of the Chief Justice of the Common Pleas for the time being shall, in all cases, be a sufficient warrant to the Bank of England for all payments made thereunder.

Dated the 25th day of March, 1869.

SAMUEL MARTIN. x

J. S. WILLES. x

COLIN BLACKBURN. x

*The Judges for the trial of Election Petitions
in England.*

NOTE

AS TO THE PAYMENT OR WITHDRAWAL OF THE DEPOSIT.

By the 6th section of the Parliamentary Elections Act, 1868, the deposit becomes security for the payment of all costs, charges and expenses that may become payable by the petitioner to any person summoned as a witness on his behalf, or to the member whose election or return is complained of.

Under General Rule 16 the deposit is to be paid into the Bank of England, and by the additional General Rules all claims upon the fund are to be disposed of by the Court or a Judge.

The additional rules then prescribe the mode of proceeding for obtaining repayment of the deposit.

The application may be made to any judge at chambers after a notice to the opposite party, upon proper affidavits stating such notice and showing that all claims have been discharged, and also who is the party entitled to receive the amount, and if the judge is satisfied he will make an order which in practice is required to be signed by the judge personally.

The order should be drawn up on reading the affidavits, which must be filed, and it should direct payment to the party who is entitled to receive the money by name.

This order cannot be made by consent on account of the claims of witnesses. When the order is obtained it is to be taken to the principal clerk of the Lord Chief Justice of the Common Pleas, who will then obtain the draft of the Chief Justice upon the back of the original order for the payment of the amount by the Bank of England.

L.

MICHAELMAS TERM, 1872.

GENERAL RULES

FOR THE EFFECTUAL EXECUTION OF "THE CORRUPT PRACTICES
(MUNICIPAL ELECTIONS) ACT, 1872."

MADE BY

SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH; SIR HENRY SINGER KEATING, KNIGHT, one of the JUSTICES of the COMMON PLEAS; and SIR ANTHONY CLEASBY, KNIGHT, one of the BARONS of the EXCHEQUER; the JUDGES for the time being on the Rota for the Trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act, 1868.

I.

The presentation of a municipal election petition shall be made by leaving it at the office of the master for the time being nominated by the chief justice of the common pleas, under the Parliamentary Elections Act, 1868, and such master or his clerk shall (if required) give a receipt which may be in the following form:—

Received on the _____ day of _____ at the
master's office a petition touching the election of *A.B.*, alderman, councillor, [*&c. as the case may be*] for the borough of
purporting to be signed by [*insert the*
names of petitioners].

C.D., Master's Clerk.

With the petition shall also be left a copy thereof for the master to send to the town clerk, pursuant to section 13, sub-section (1), of the Municipal Elections Act.

II.

A municipal election petition shall contain the following statements:—

VI.

Evidence need not be stated in the petition, but the court of common pleas or a judge at chambers may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the court of common pleas, and upon such terms as to costs and otherwise as may be ordered.

VII.

When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the court of common pleas or a judge at chambers, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

VIII.

When the respondent in a petition under the act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 15th section of the act, sub-section 9, such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court of common pleas or a judge at chambers, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

IX.

With the petition petitioners shall leave at the office of the master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney in the court of common pleas, whom they authorise to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the general post office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings, may be given by sticking up the same at the master's office.

X.

Any person elected to any municipal office may at any time after he is elected send or leave at the office of the master a writing, signed by him or on his behalf, appointing a person entitled to practise as an attorney in the court of common pleas, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the general post office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

XI.

The master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII.

The master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 13 of the act, sub-section (1), and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

XIII.

The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

XIV.

Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge at chambers on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

In case of evasion of service the sticking up a notice in the office of the master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the bank of England to an account to be opened there by the description of "The Corrupt Practices Municipal Elections Act, 1872, Security Fund," which shall be vested in and drawn upon from time to time by the chief justice of the common pleas for the time being, for the purposes for which security is required by the said act, and a bank receipt or certificate for the same shall be forthwith left at the master's office.

The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the _____ day of _____, in the year of our Lord 18____, before me [name and description] came *A.B.*, of [name and description as above prescribed] and acknowledged himself [or severally acknowledged themselves] to owe to our sovereign lady the queen the sum of five hundred pounds [or the following sums], (that is to say) the said *C.D.* the sum of £____, the said *E.F.* the sum of £____, the said *G.H.* the sum of £____, and the said *J.K.* the sum of £____, to be levied on his [or their respective] goods and chattels, land and tenements, to the use of our said sovereign lady the queen, her heirs and successors.

The condition of this recognizance is that if [here insert the names of all the petitioners, and if more than one, add or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election

petition signed by him [*or them*] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or petitioners, or any of them,*] under the Corrupt Practices Municipal Elections Act, 1872, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[*Signature of sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the _____ day of _____ at _____, before me, _____ C.D.

A justice of the peace [*or as the case may be*].

XX.

The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

XXI.

The time for giving notice of any objection to a recognizance under the 13th section of the act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

XXII.

An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIII.

Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXIV.

Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

XXV.

If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 13th section of the said act, and the petition shall be at issue.

XXVI.

If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXVII.

The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

XXVIII.

The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the court of common pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows :

In the Common Pleas.

Corrupt Practices Municipal Elections Act, 1872.

I *A. B.* of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts, of the clear value of £

Sworn, &c.

XXIX.

The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the court of common pleas, and enforced in like manner as a judge's order.

XXX.

The master shall make out the municipal election list. In it he shall insert the name of the agent of the petitioners and respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said act, and headed "Municipal Election List."

The time of the trial of each municipal election petition shall be fixed by the election judges on the rota, or any one of them, who shall signify the same to the master, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

XXII.

XXIII.

Corrupt Practices Municipal Election Act, 1872.

Borough of

Dated the

day of

Signed by order,

A. B.,

The master appointed under the above act.

XXXIV.

A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

XXXV.

In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

XXXVI.

No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

XXXVII.

The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a Judge at chambers, upon hearing the parties.

XXXVIII.

The title of the court held for the trial of a municipal election petition, may be as follows :--

“ Court for the trial of a municipal election petition for the borough of [*or as may be*] between petitioner and respondent,”
and it shall be sufficient so to entitle all proceedings in that court.

XXXIX.

An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

XL.

The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand, unless the court shall otherwise order.

XLI.

The order of the court to compel the attendance of a person as a witness may be in the following form :

Court for the trial of a municipal election petition for [*complete the title of the court*] the day of

To *A.B.* [*describe the person*]. You are hereby required to attend before the above court at [*place*] on day of
at the hour of [*or forthwith, as the case may be*], to be examined as a witness in the matter of the said

petition, and to attend the said court until your examination shall have been completed.

As witness my hand, *A.B.*,

The barrister to whom the trial of the said petition is assigned.

XLII.

In the event of its being necessary to commit any person for contempt, the warrant may be as follows:

At a court holden on _____ at _____
for the trial of a municipal election petition for the borough of _____ before *A.B.*, one
of the barristers appointed for the trial of municipal election petitions, pursuant to "The Corrupt Practices Municipal Elections Act, 1872."

Whereas *C.D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C.D.* for his said contempt to be imprisoned in the _____ gaol for _____ calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ _____, and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C.D.* may be found, shall take the said *C.D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C.D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the _____ day of _____ *A.B.*
_____ *A.B.*

XLIII.

Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

XLIV.

All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Corrupt Practices Municipal Elections Act, 1872, as a judge at chambers in

XLV.

The following form shall be sufficient:—

Dated this _____ day of _____

(Signed)

XLVI.

XLVII.

The following may be the form of such notice:—

In the Election Petition for _____ in which
_____ is petitioner and
_____ respondent.

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

XLVIII.

Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the Master of his in-

tention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

XLIX.

The time and place for hearing the application shall be fixed by a judge, and whether before the Court of Common Pleas, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as herein-before provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

L.

Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 17, sub-section 5, of the said act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the Court of Common Pleas or a judge at chambers by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the Court of Common Pleas or a judge at chambers may allow.

LI.

If the respondent dies, any person entitled to be a petitioner under the act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

LII.

The manner and time of the respondent's giving notice that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the Master signed by the respondents six days before the day appointed for trial exclusive of the day of leaving such notice.

LIII.

Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

LIV.

The time for applying to be admitted as a respondent in either of the events mentioned in the 18th section of the Act shall be within

ten days after such notice is given as herein-before directed, or such further time as the Court of Common Pleas or a judge at chambers may allow.

LV.

Costs shall be taxed by the Master, or at his request by any Master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Common Pleas.

LVI.

An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

LVII.

No proceeding under the Corrupt Practices Municipal Elections Act, 1872, shall be defeated by any formal objection.

LVIII.

Any rule made or to be made in pursuance of the Act, if made in term time, shall be published by being read by the Master in the Court of Common Pleas, and if made out of term by a copy thereof being put up at the Master's office.

Dated the 20th day of November, 1872.

COLIN BLACKBURN.

H. S. KEATING.

A. CLEASBY.

The judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868.

M.

ADDITIONAL GENERAL RULES

FOR THE EFFECTUAL EXECUTION OF "THE CORRUPT PRACTICES
(MUNICIPAL ELECTIONS) ACT, 1872,"

MADE BY

The Honble. SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH; The Honble. SIR HENRY SINGER KEATING, KNIGHT, one of the JUSTICES of the COMMON PLEAS; and The Honble. SIR ANTHONY CLEASBY, KNIGHT, one of the BARONS of the EXCHEQUER; the JUDGES for the time being on the Rota for the Trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act, 1868.

I.

All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges and expenses payable by the Petitioners pursuant to the 16th General Rule, made the 20th day of November, 1872, by the Judges for the trial of Election Petitions in England, shall be disposed of by the Court of Common Pleas or a Judge at Chambers.

II.

Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges and expenses, be returned or otherwise disposed of as justice may require, by Rule of the Court of Common Pleas or order of a Judge at Chambers.

III.

Such Rule or Order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court of Common Pleas or Judge at Chambers may require.

IV.

The Rule or Order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

V.

Upon such Rule or Order being made, the amount may be drawn for by the Chief Justice of the Common Pleas for the time being.

VI.

The draft of the Chief Justice of the Common Pleas for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

VII.

The Barrister engaged may appoint a proper person to act as Crier and Officer of the Court.

VIII.

The Shorthand writer to attend at the trial of a Petition shall be the Shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the Notice of Trial to the said Shorthand writer to the House of Commons.

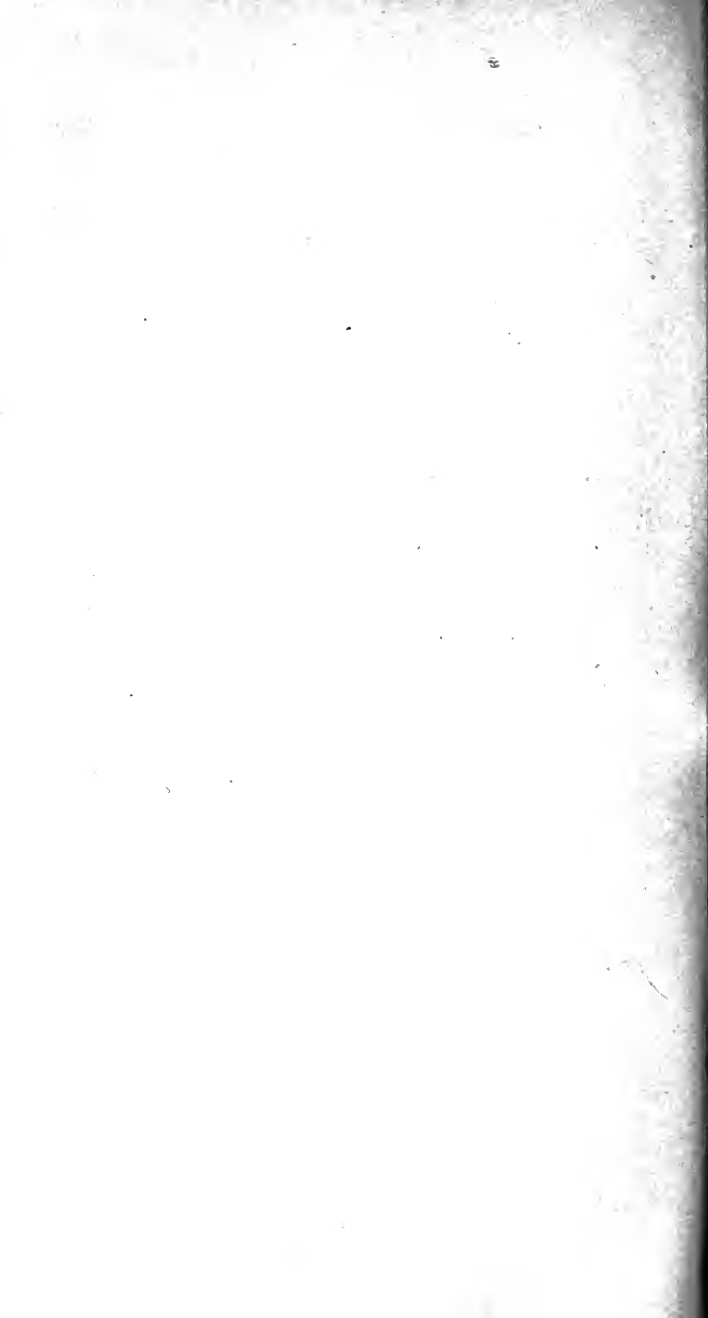
COLIN BLACKBURN.

H. S. KEATING.

A. CLEASBY.

Judges for the time being on the Rota for the trial of
Election Petitions in England, pursuant to the Parlia-
mentary Elections Act, 1868.

Dated the 10th day of December, 1872.



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